



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2008

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2008-06808

Dear Mr. Phillips:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 312542.

The City of Fort Worth (the "city") received a request for warning tickets issued by "Blue Crew" since March 21, 2007. You state that some of the requested information is being released, but claim that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, the city acknowledges, and we agree, that you failed to comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b)

¹The requestor has asked the city to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the city has made a good faith effort to do so.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(governmental body must ask for decision from this office and state exceptions that apply within ten business days of receiving written request for information). A governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.101 can provide a compelling reason to overcome this presumption; therefore, we will address your arguments under this exception. We note that section 552.136 of the Government Code, which also can provide a compelling reason to overcome the presumption, may be applicable to some of the submitted information; therefore, we will consider whether the submitted information is excepted under this section as well.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 182.052 of the Utilities Code provides in relevant part the following:

- (a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, if the customer requests that the government-operated utility keep the information confidential. However, a government-operated utility may disclose information related to the customer's volume or units of utility usage or amounts billed to or collected from the individual for utility usage if the primary source of water for such utility was a sole-source designated aquifer.
- (b) A customer may request confidentiality by delivering to the government-operated utility an appropriately marked form provided under Subsection (c)(3) or any other written request for confidentiality.

Util. Code § 182.052(a)-(b). Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052; however, you have provided no information to allow us to conclude that any of these exceptions apply in this case. *See id.* § 182.054. Garbage service is included in the scope of utility services covered by section 182.052. *See id.* § 182.051(3). "Personal information" under section 182.052(a) means an individual's address, telephone number, and social security number. *Id.* § 182.051(4). A customer's request for confidentiality must precede the utility's receipt of the request for information. Open Records Decision No. 625 at 6 (1994) (construing statutory predecessor). You inform us that the addresses you have marked pertain to

individuals who timely elected to keep their public utility information confidential under section 182.052(a) of the Utilities Code. Based on this representation, we agree that the city must withhold the green-highlighted addresses under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code.

We note that the submitted information contains customer identity numbers. Section 552.136(b) of the Government Code provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Therefore, to the extent that the customer identity numbers consist of account numbers, the city must withhold this information under section 552.136.

To conclude, the city must withhold the green-highlighted addresses under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. The city must also withhold the customer identity numbers under section 552.136 of the Government Code if they are account numbers. The city must release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

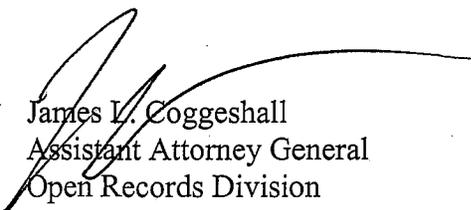
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jh

Ref: ID# 312542

Enc. Submitted documents

c: Mr. Robert Wachal
1615 Rocky Point Drive
Lewisville, Texas 75077
(w/o enclosures)