ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2008

Mr. Darrell D-M Noga
Fee, Smith, Sharp & Vitullo, LLP
Three Galleria Tower
13155 Noel Road, Suite 1000
Dallas, Texas 75240

OR2008-07241

Dear Mr. Noga:

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# 310918.

The City of Coppell (the "city"), which you represent, received a request for a specified video recording. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that Exhibit 3 is not responsive to the request for information because it was created after the city received the request. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release this information, which we have marked, in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.–San Antonio 1978, writ dism'd).

Next, we address the city's contention that Exhibit 2 is not responsive to the request for information. In this instance, the requestor seeks a specified video recording and also stated that he is requesting the tape in order to view a particular accident. Although Exhibit 2 consists of the requested recording, you assert that because the recording does not capture an accident or violation, it is not responsive to the request. We note, however, that neither the actual content nor the reason it is requested determines information's responsiveness. Thus, we conclude that because the recording pertains to the intersection and time period specified by the requestor, the submitted recording is responsive to the request. Thus, we will address your arguments against disclosure of the submitted information.

You argue that the submitted recording is confidential under section 552.101 of the Government Code in conjunction with section 707.006 of the Transportation Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by other statutes. Gov't Code § 552.101. Section 707.006 provides:

> (a) A local authority shall operate a photographic traffic control signal enforcement system only for the purpose of detecting a violation or suspected violation of a traffic-control signal.
>
> (b) A person commits an offense if the person uses a photographic traffic signal enforcement system to produce a recorded image other than in the manner and for the purpose specified by this chapter.
>
> (c) An offense under this section is a Class A misdemeanor.

Transp. Code § 707.006. We note that section 707.006 does not expressly make information confidential. In order for section 552.101 to apply, a statute must contain language expressly making certain information confidential. *See* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987), 465 at 4-5 (1987). Confidentiality cannot be implied from the structure of a statute or rule. *See* ORD 465 at 4-5. Accordingly, the city may not withhold the submitted recording from disclosure pursuant to section 707.006 of the Transportation Code in conjunction with section 552.101 of the Government Code. As you raise no other exception to disclosure of this information, it must be released to the requestor.

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,

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 310918

Enc. Submitted documents

c: Mr. K. Donnell Tith
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(w/o enclosures)