



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 1, 2010

Ms. Dorothy Palumbo  
City Attorney  
City of Highland Village  
1000 Highland Village Road  
Highland Village, Texas 75077

OR2010-13334

Dear Ms. Palumbo:

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# 392307 (OR 2010-036).

The City of Highland Village (the "city") received a request for copies of all traffic citations issued for violations of the use of a cellular telephone or wireless communications device in a school zone, information on the money received from such violations, and information on how the city's court costs are calculated. You state you have released some of the requested information to the requestor. You claim the submitted information is not subject to the Act. Alternatively, you contend the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you claim the submitted citations are not subject to the Act because they are maintained by the municipal court and are records of the judiciary. Section 552.003(b) of the Government Code excludes the judiciary from the Act. Therefore, the Act neither authorizes information held by the judiciary to be withheld nor requires that it be disclosed. *See* Open Records Decision No. 25 (1974). We note, however, the request was received by the city secretary, who is the public information coordinator for the entire city. We further note the requestor did not request the records from the municipal court. Accordingly, to the extent that the submitted citations are maintained solely by the city's municipal court, they are not subject to release under the Act and need not be released in response to the present request.<sup>1</sup> *See* Gov't Code § 552.0035 (access to information maintained by or for judiciary

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<sup>1</sup>We note that records of the judiciary may be public under other sources of law. *See* Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); *id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Loc. Gov't Code § 191.006 (records belonging to

is governed by rules adopted by supreme court); Tex. R. Jud. Admin. 12 (public access to judicial records). However, to the extent copies of the submitted citations are also maintained by the city, they are subject to the Act, and we will consider your remaining arguments against disclosure.

Next, you argue the requestor agreed to certain redactions. You state, and provide documentation showing, you sent the requestor a cost estimate that contains a statement requesting he agree in writing to the redaction of juvenile records and other information the city believed to be excepted from disclosure under the Act. However, in conversations with this office, you stated the city never received any agreement in writing from the requestor.<sup>2</sup> Accordingly, we must address the city's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You state the city received the request on May 4, 2010. However, you did not request a ruling from this office, state the claimed exceptions, or submit the information required by section 552.301(e) until June 29, 2010. Consequently, we find the city failed to comply with the requirements of section 552.301. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential

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office of county clerk shall be open to public unless access restricted by law or court order); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released); Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

<sup>2</sup>We note the city requested a ruling in response to a complaint the requestor filed with this office regarding the redactions the city made of the documents provided to the requestor.

by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). You assert the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. However, section 552.103 is a discretionary exception to disclosure and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). In failing to comply with the requirements of section 552.301, you have waived your claim under section 552.103. Accordingly, the city may not withhold any portion of the submitted information under section 552.103. Section 552.101 of the Government Code can provide a compelling reason to withhold the information from disclosure. Additionally, we note some of the submitted information is subject to section 552.130 of the Government Code, which can also provide a compelling reason to withhold the information from disclosure.<sup>3</sup> Therefore, we will address the applicability of sections 552.101 and 552.130 to the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses information protected by other statutes. The city asserts some of the submitted citations are excepted from disclosure under section 552.101 in conjunction with section 58.007 of the Family Code. Section 58.007 provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Fam. Code § 58.007(c). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct in need of supervision, that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of the Family Code). We note, however, section 58.007 does not make information relating to traffic offenses confidential. *See id.* §§ 51.02(16) (defining traffic offense), 51.03(a) (delinquent conduct does not include traffic offense), 51.03(b) (conduct indicating need for supervision does not include traffic offense). For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Upon review, the submitted citations relate to traffic offense, not delinquent conduct or conduct in need of supervision. Furthermore, we find the citations do not identify a juvenile as a suspect or offender. Therefore, we conclude you have failed to establish section 58.007(c) of the Family Code is applicable to any of the submitted citations, and they may not be withheld under section 552.101 of the Government Code on that basis.

We note some of the information on the submitted citations is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). We further note that section 552.130 of the Government Code does not apply to out-of-state motor vehicle record information. Upon review, we find that the information we have marked must be withheld under section 552.130 of the Government Code.<sup>4</sup>

In summary, to the extent that the submitted citations are maintained solely by the city’s municipal court, they are not subject to release under the Act and need not be released in response to the present request. However, to the extent copies of the submitted citations are also maintained by the city, the city must withhold the information we have marked under section 552.130 of the Government Code, and the remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

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<sup>4</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver’s license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal line extending to the right.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/em

Ref: ID# 392307

Enc. Submitted documents

c: Requestor  
(w/o enclosures)