



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2010

Mr. James T. Jeffrey
2214 Park Springs Boulevard
Arlington, Texas 76013

OR2010-17558

Dear Mr. Jeffrey:

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# 400886.

The City of Burleson (the "city"), which you represent, received a request for information pertaining to a specified traffic citation. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes a judgment and a dismissal, both of which are court-filed documents signed by a judge. A document that has been filed with a court is expressly public under section 552.022(a)(17) of the Government Code and may not be withheld unless it is confidential under "other law." See Gov't Code § 552.022(a)(17). Although you seek to withhold this information under section 552.103 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. See *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 section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not "other law" that makes information confidential for purposes of section 552.022(a)(17). Section 552.101, however, is a mandatory exception to disclosure and thus is "other law" for purposes of section 552.022. We therefore consider whether section 552.101 of the Government Code excepts from disclosure any information that is subject to section 552.022(a)(17).

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. Section 552.101 encompasses information protected by other statutes. We understand you to raise section 552.101 in conjunction with section 521.051 of the Transportation Code, which is the statutory predecessor to section 21(j)(3) of article 6687b of Vernon's Texas Civil Statutes. *See* Act of May 12, 1995, 74th Leg., R.S., ch. 165, § 1, 1995 Tex. Gen. Laws 1025, 1549 (emphasis added). Section 521.051 provides:

The department may not disclose class-type listings from the basic driver's license record file to any person except as provided by Section 521.049(c), regardless of whether the requestor is eligible to receive the information under Chapter 730.

Transp. Code § 521.051. Section 521.051 is only applicable when a requestor seeks all license listings of a specific type from the Texas Department of Public Safety (the "DPS"). *See id.* § 521.001(a)(1-a) (defining "department" for purposes of chapter 521 to mean the DPS); Open Records Decision No. 618 at 3-4 (1993) (stating that the purpose of the statutory predecessor to section 521.051 "appears to be to relieve the [DPS] of the administrative burden of compiling a list based primarily on location and the existence of traffic convictions[.]"). In this instance, the requestor seeks records created and maintained by the city, not the DPS. Additionally, the requestor in this instance seeks information pertaining to a particular citation, not a class-type listing made confidential by section 521.051. Thus, section 521.051 of the Transportation Code is not applicable in this instance, and no information may be withheld under section 552.101 on that basis. As you raise no other exceptions to their disclosure, the submitted judgment and dismissal that are subject to section 552.022(a)(17) must be released.

We next address your argument against release of the information not subject to section 552.022. Section 552.103 of the Government Code provides in pertinent part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated

on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); ORD 551 at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

You represent, and provide documentation reflecting, that the former city police officer who issued the citation at issue filed a lawsuit against the city prior to the date the city received this request for information. You explain that, in this lawsuit, the officer alleges he was terminated for issuing the citation at issue in this request. You also represent this lawsuit was pending on the date the city received the request for information. Thus, based on your representations and our review, we agree litigation was pending for purposes of section 552.103 on the date the city received the present request for information. Upon review, we also find the submitted information relates to this pending litigation. Accordingly, the remaining information at issue is subject to section 552.103 of the Government Code.

We note that the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to the litigation to obtain such information through discovery procedures. *See* ORD 551 at 4-5. Thus, there is no interest in withholding under section 552.103 any information that has either been obtained from or provided to the city's opposing party in the pending litigation. *See* Open Records Decision Nos. 349 (1982), 320 (1982). As noted above, the city's only opposing party in the pending litigation issued the submitted citation. As such, this citation was obtained from the city's opposing party. However, this individual only had access to this information in the usual scope of his employment as a city police officer. Such information is not considered to have been obtained from the opposing party to the litigation for purposes of section 552.103. Therefore, the city may withhold remaining information at issue under section 552.103 of the Government Code. We note, however, that the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the city must release the information we marked pursuant to section 552.022(a)(17) of the Government Code. The remaining submitted information may be withheld under section 552.103 of the Government Code.

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, 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 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 "Bob Davis", with a long, sweeping underline that extends to the right.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 400886

Enc. Submitted documents

c: Requestor
(w/o enclosures)