



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 6, 2010

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston Legal Department
P.O. Box 368
Houston, Texas 77001-0368

OR2010-18190

Dear Ms. De La Garza:

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# 402407 (Fort Worth Reference No. 17745).

The Houston Police Department (the "department") received a request for "racial profiling stats" of two named department officers. You claim 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, you acknowledge, and we agree, the department failed to request a ruling within the statutory time period prescribed by section 552.301(b) of the Government Code. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption 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; *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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because section 552.101 of the Government Code can provide a

compelling reason to withhold information, we will consider its applicability to the submitted information.

Section 552.101 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. You argue that the requested information is made confidential by articles 2.132(e) and 2.134(d) of the Code of Criminal Procedure. Article 2.132 of the Code of Criminal Procedure provides in relevant part:

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

...

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

(A) the Commission on Law Enforcement Officer Standards and Education; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

Code Crim. Proc. art. 2.132(b)(7). Article 2.132 also provides that such a required report “*may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer.*” *Id.* art. 2.132(e) (emphasis added).

Next, article 2.133 of the Code of Criminal Procedure provides in relevant part as follows:

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop

Id. art. 2.133(b). Article 2.134 provides in part that

[a] law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133 . . . [and] shall submit a report containing the incident-based data compiled during the previous calendar year to the . . . governing body of each county or municipality served by the agency.

Id. art. 2.134(b). Article 2.134 further provides that “[a] report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer.” *Id.* art. 2.134(d) (emphasis added). You explain that the statistical information was created pursuant to articles 2.132 and 2.133. Based on these code provisions, you argue that although the requested information on its face does not identify a particular peace officer, the production of responsive information in this instance would clearly identify the peace officers because the requestor asked for racial profiling statistics for two specific named police officers.

Based on your representations and our review of the information at issue, we agree that the release of the submitted information would violate articles 2.132(e) and 2.134(d) of the Code of Criminal Procedure. The primary goal in statutory interpretation is ascertaining and effectuating the Legislature’s intent. *In re Canales*, 52 S.W.3d 698, 702 (Tex. 2001). In discerning the Legislature’s intent, we begin with a statute’s plain language because we assume that the Legislature tried to say what it meant and, thus, that its words are the surest guide to its intent. *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999). “In applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of the statute *as it is written.*” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) (emphasis added) (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex.1994)). We cannot ignore or contravene legislative intent. *See McKinney v. Blankenship*, 282 S.W.2d 691 (Tex. 1955) (a statute should not be construed so as to lead to a foolish or an absurd result); *see also State ex rel. Childress v. School Trustees of Shelby County*, 239 S.W.2d 777 (Tex. 1951), *Klevenhagen v. Int’l Fidelity Ins. Co.*, 861 S.W.2d 13 (Tex. App.—Houston [1st Dist.] 1993) (when interpreting statute, Court of Appeals may consider consequences of particular construction, and Court of Appeals will presume legislature intended fair, rational and reasonable result). Therefore, the release of this data in this instance would identify particular peace officers and result in a violation of the code. Accordingly, we conclude that the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with articles 2.132(e) and 2.134(d) of the Code of Criminal Procedure.

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 cursive script, appearing to read "Jennifer Burnett", with a horizontal line extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 402407

Enc. Submitted documents

c: Requestor
(w/o enclosures)