



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 6, 2010

Ms. Lisa D. Mares  
Taylor, Olsen, Adkins, Sralla, & Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2010-18269

Dear Ms. Mares:

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# 402045.

The City of Weatherford (the "city"), which you represent, received a request for specified types of video footage of city police officers and the related audio recordings for a specific time period.<sup>1</sup> You state that the city does not maintain some of the responsive information because the city's video maintenance system automatically deletes video footage after ninety days unless the footage is saved.<sup>2</sup> You claim that some of the responsive information is not subject to the Act. You claim that the submitted information is excepted from disclosure

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<sup>1</sup>The city sought and received a clarification of the information requested for the second request for information. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

<sup>2</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

under sections 552.101, 552.108, 552.119, 552.130, and 552.151 of the Government Code.<sup>3</sup> We have considered the exceptions you claim and reviewed the submitted information.<sup>4</sup>

Initially, we address the city's statement that the video footage maintained by the city is not "organized, categorized, or labeled in a manner that would allow the city to readily search for video footage that is responsive to . . . the request." Thus, you state, that a city employee would be required to view each video in its entirety to determine whether it is responsive to the request. We agree the Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). We note, however, a governmental body may not decline to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976) (cost or difficulty in complying with predecessor of Act does not determine availability of information); *see also* Open Records Decision No. 497 (1988) (noting fact that submitting copies for review may be burdensome does not relieve governmental body of its responsibility to do so). Furthermore, the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8, 561 at 8-9 (1990), 555 at 1-2, 534 at 2-3 (1989). In this instance, the request for information does not ask the city to answer questions, perform legal research, or create new information; rather, the request requires the city to locate records that you admit the city maintains. We note that you have submitted for our review responsive video and audio files. Because you have submitted information for our review, we believe you have made a good faith effort to submit information responsive to the request. Therefore, we will consider your arguments to withhold the submitted information.

Next, you contend that some of the responsive information is not subject to the Act because it is maintained by the city's municipal court or the county district attorney's office. We first note that information in the possession of a county district attorney's office is not generally considered to be records of the judiciary and you do not provide any explanation that the district attorney is holding such records on behalf of the judiciary. However, in this instance the request for information was submitted to the city and not to the county district attorney's office. Thus, any records that are solely maintained by the county district attorney's office are not responsive to this request for information and need not be released in response to the request. We note, however, "public information" for purposes of the Act is defined by

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<sup>3</sup>We note that the city initially raised several other exceptions to disclosure under the Act but has since withdrawn its claims under those sections. Accordingly, we do not address those sections.

<sup>4</sup>We 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.

section 552.002 of the Government Code as “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it.” Gov’t Code § 552.002(a). Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988). Thus, if any responsive information in the possession of the county district attorney’s office is either independently maintained by the city or is maintained for the city by the county district attorney’s office and the city owns such information or has a right of access to it, such information is responsive to the instant request and must be released unless it falls within an exception to disclosure.

With respect to any responsive video footage which is maintained by the city’s municipal court, section 552.003(b) of the Government Code excludes the judiciary from the Act. *See* Gov’t Code § 552.003(b). 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 any responsive video footage is maintained solely by the city’s municipal court, it is not subject to release under the Act and need not be released in response to the present request.<sup>5</sup> *See* Gov’t Code § 552.0035 (access to information maintained by or for judiciary is governed by rules adopted by supreme court); Tex. R. Jud. Admin. 12 (public access to judicial records). However, to the extent any such video footage is also maintained by the city, it is subject to the Act, and must be released unless it falls within an exception to disclosure.

We will now address your claimed exceptions to disclosure of 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. Section 552.101 encompasses information protected by other statutes, such as 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,

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<sup>5</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 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).

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.

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). 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). You claim that Exhibits C-2 and C-14, and the corresponding audio at Exhibits D-2 and D-14 consist of juvenile law enforcement records subject to section 58.007. Upon review, Exhibits C-2 and D-2 reveal that these exhibits involve allegations of a juvenile engaged in delinquent conduct occurring after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 of the Family Code apply to this information. Thus, Exhibits C-2 and D-2 are subject to section 58.007(c), and must be withheld in their entirety under section 552.101 of the Government Code.

Upon review of Exhibits C-14 and D-14, however, it is unclear whether any of the offenders depicted in these Exhibits are ten years of age or older and under seventeen years of age. Because we are unable to determine the age of the offenders involved in Exhibits C-14 and D-14, we must rule conditionally. To the extent Exhibits C-14 and D-14 constitute records concerning a juvenile offender who is ten years of age or older and under seventeen years of age, section 58.007(c) of the Family Code is applicable to Exhibits C-14 and D-14 and they must be withheld under section 552.101 of the Government Code on that basis. However, to the extent this information does not pertain to an offender who is ten years of age or older and under seventeen years of age, section 58.007(c) is not applicable to Exhibits C-14 and D-14 and they may not be withheld under section 552.101 on that basis. In that case, we will address your remaining arguments against the disclosure of this information.

Next, you claim Exhibits C-3, C-4, C-7, C-8, C-9, C-10, C-11, C-12, C-14, C-16, and C-17 are excepted under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals

with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibits C-3, C-4, C-7, C-8, C-9, C-10, C-11, C-12, C-14, C-16, and C-17 relate to open and pending criminal cases. Based upon your representation and our review, we conclude that the release of Exhibits C-3, C-4, C-7, C-8, C-9, C-10, C-11, C-12, C-14, C-16, and C-17 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the city may withhold Exhibits C-3, C-4, C-7, C-8, C-9, C-10, C-11, C-12, C-14, C-16, and C-17 under section 552.108(a)(1).<sup>6</sup>

Section 552.130 excepts from disclosure information that relates to a motor vehicle operator’s license, driver’s license, motor vehicle title, registration, or a personal identification document issued by a Texas agency. Gov’t Code § 552.130(a)(1), (2). You state that you are withholding information under section 552.130 pursuant to Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver’s license number, a copy of a Texas driver’s license, a Texas license plate number, the portion of a photograph that reveals a Texas license plate number, and the portion of any video depicting a discernible Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684. In this instance you seek to withhold the video and audio information in some of the remaining information, Exhibits C-15, D-1, and D-3 through D-17, in its entirety because you state the city does not have the technical capability to redact the Texas license plate numbers and Texas driver’s license numbers contained in the information. We note that ORD 684 does not authorize a governmental body to withhold any Texas motor vehicle record information from audio recordings without the necessity of seeking a ruling from this office. *See id.* Further, ORD 684 states “[i]f a governmental body lacks the technological capability to redact the Texas motor vehicle record information from a requested video, it must seek a ruling from this office if it wishes to withhold the information from required public disclosure.” *See id.* at 10 n. 4. Thus, none of the information at issue may be withheld pursuant ORD 684. We agree that Exhibit C-15 contains visible Texas license plate numbers which must be withheld under section 552.130. Upon review of the remaining audio Exhibits you seek to withhold, Exhibits D-1 and D-3 through D-17, we note that some of the audio files contained in each Exhibit do not contain Texas motor vehicle record information that is subject to section 552.130. Accordingly, the city must withhold only the audio files

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<sup>6</sup>As our ruling is dispositive, we need not address your remaining arguments against the disclosure of this information.

in Exhibits D-1 and D-3 through D-17 that contain Texas motor vehicle record information under section 552.130 of the Government Code. The city may not withhold any of the audio files in Exhibits D-1 and D-3 through D-17 that do not contain Texas motor vehicle record information based on section 552.130. Because you state the city does not have the technical capability to redact the Texas motor vehicle record information in Exhibits C-15, D1, and D-3 through D-17, the city must withhold Exhibit C-15 in its entirety, as well as the entire audio files in Exhibits D-1 and D-3 through D-17 to the extent they contain information that is subject to section 552.130.

You raise section 552.119 of the Government Code for a portion of the remaining information, Exhibits C-1, C-5, C-6, and C-13. Section 552.119 provides:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

Gov't Code § 552.119. By its terms, section 552.119 only applies to photographs of licensed peace officers as defined by article 2.12. *Id.* § 552.119(a). To demonstrate the applicability of section 552.119, a governmental body must demonstrate that release of the photograph would endanger the life or physical safety of the officer. In this instance, you have not explained how release of any of the remaining information would endanger an officer's life or physical safety. Accordingly, we determine the city has failed to demonstrate the applicability of section 552.119 to Exhibits C-1, C-5, C-6, and C-13.

Finally, section 552.151 of the Government Code provides in part the following:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances

pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

*Id.* § 552.151. You state that you believe section 552.151 is applicable to some of the remaining information. However, we find you have failed to demonstrate how release of the remaining information would subject city police officers to a substantial threat of physical harm. Accordingly, the city may not withhold any of the remaining information under section 552.151 of the Government Code.

In summary, to the extent that any responsive video footage is maintained solely by the city's municipal court, it is not subject to release under the Act and need not be released in response to the present request. The city must withhold Exhibits C-2 and D-2 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. To the extent Exhibits C-14 and D-14 pertain to a juvenile offender who is ten years of age or older and under seventeen years of age, Exhibits C-14 and D-14 must be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The city may withhold Exhibits C-3, C-4, C-7, C-8, C-9, C-10, C-11, C-12, C-14, C-16, and C-17 under section 552.108(a)(1) of the Government Code. The city must withhold Exhibit C-15 in its entirety, as well as the audio files in Exhibits D-1 and D-3 through D-17 to the extent they contain Texas motor vehicle record information, under section 552.130 of the Government Code. 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 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,



Laura Ream Lemus

Assistant Attorney General  
Open Records Division

LRL/tf

Ref: ID# 402045

Enc. Submitted documents

c: Requestor  
(w/o enclosures)