



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 28, 2011

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2011-05854

Dear Ms. Graham:

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# 415570.

The Mesquite Police Department (the "department") received two requests for specified misdemeanor class C citation information to be provided on a daily basis in electronic format or, alternatively, in paper form. You indicate the department does not have any information responsive to the request for electronic files because those files are maintained solely by the City of Mesquite Municipal Court (the "municipal court").¹ Cf. Gov't Code §§ 552.003(1)(B) ("governmental body" does not include the judiciary), .0035(a) (access to information collected, assembled, or maintained by or for the judiciary is governed by rules adopted by the Supreme Court of Texas or other applicable laws and rules). You claim the requested citation paper copies are not subject to the Act. Alternatively, you claim this information is exempted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.²

¹The 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).

²We assume 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 those records contain substantially different types of information than that submitted to this office.

Initially, you claim, and we agree, the requestor seeks information to be provided on an ongoing basis. It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See id.* §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 87 (1975). Consequently, a governmental body is not required to comply with a standing request to supply information on a periodic basis, as such information is prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the department need not comply with the request to provide information on an ongoing basis. We will, however, consider your arguments for the responsive citation paper copies that existed on the date the department received the request for information.

You contend the requested citation paper copies are not subject to the Act because the official record copies of the citations and all information on the citations are maintained exclusively by the municipal court and are, therefore, records of the judiciary. *See* Gov't Code §§ 552.003(1)(B), .0035(a). You explain the citations are written by department police officers in triplicate form, with one copy given to the person cited, one copy maintained by the municipal court, and one copy maintained by the citing police officer for his or her own use. The Act applies to "public information," which is defined in 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.

Id. § 552.002. Information is generally within the scope of the Act when it relates to the official business of a governmental body or is maintained by a public official or employee in the performance of official duties, even though it may be in the possession of one person. *See* Open Records Decision No. 635 at 3 (1995). In this instance, we agree the citation records maintained by the municipal court are records of the judiciary and, therefore, not subject to the Act. We find, however, the officers' citation copies are maintained by the department and pertain to the transaction of official department business. Thus, the officers' citation copies are subject to the Act. *See* Gov't Code § 552.002(a). Therefore, we will consider your arguments against disclosure under sections 552.103 and 552.108 of the Government Code for this information.

Section 552.103 of the Government Code provides:

- (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.

Id. § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information and (2) the information at issue is related to that litigation. *See 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.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

You indicate the officers' citation copies pertain to pending criminal prosecutions. We note, however, the department is not a party to these prosecutions and, therefore, does not have a litigation interest in the matters for purposes of section 552.103. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (stating predecessor to section 552.103 only applies when governmental body is party to litigation). In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. In this instance, you have not provided this office with such a representation. *See* Gov't Code § 552.301(e)(1) (requiring the governmental body to explain the applicability of the raised exception). Furthermore, the opposing parties in the pending prosecutions have already been provided with copies of the citations at issue. Once information has been obtained by all parties to pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Consequently, you have not established the applicability of section 552.103 of the Government Code to the officers' citation copies, and the department may not withhold any of this information on that basis.

You also claim the officers' citation copies are excepted from disclosure under section 552.108 of the Government Code. You quote the statutory language of sections 552.108(a)(2) and 552.108(b)(2) of the Government Code, which provide:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Id. §§ 552.108(a)(2), (b)(2). Sections 552.108(a)(2) and 552.108(b)(2) are applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. Generally, a governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you have not provided any explanation of how the citations at issue pertain to criminal investigations or prosecutions that did not result in convictions or deferred adjudication. Consequently, we find you have failed to demonstrate the applicability of either section 552.108(a)(2) or section 552.108(b)(2) of the Government Code to the citations at issue, and the citations may not be withheld on those bases.

We note the citations at issue may contain Texas motor vehicle record information. Section 552.130 of the Government Code provides 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.³ Gov't Code § 552.130(a)(1), (2). In the submitted citations, we have marked a representative sample of the Texas motor vehicle record information that is excepted under section 552.130. To the extent the responsive citations

³The 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).

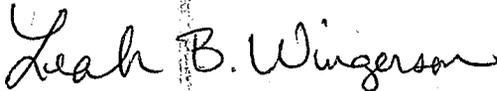
contain this type of information, the department must withhold this information under section 552.130 of the Government Code.⁴

In summary, the department need not comply with the request to provide information on an ongoing basis. To the extent the responsive citations contain the type of information we have marked, the department must withhold this information under section 552.130 of the Government Code. The remaining responsive 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, 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bs

Ref: ID# 415570

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

⁴We note this office 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 and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.