



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 10, 2011

Mr. Alan P. Petrov  
Johnson, Radcliffe, Petrov & Bobbitt P.L.L.C  
1001 McKinney, Suite 1000  
Houston, Texas 77002-6424

OR2011-06472

Dear Mr. Petrov:

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# 417240.

The City of West University Place (the "city"), which you represent, received requests for three categories of information, including (1) specified information concerning the individuals that have been or are currently in the city jail; (2) police reports or summaries containing specified information; and (3) specified information related to all driving while intoxicated ("DWI") arrests made by the city police department (the "department") over the past twenty-four months. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.

Initially, we note the city did not submit for our review information responsive to the third category of information. Although you state the city submitted a representative sample of information, no portion of the submitted representative sample pertains to the specified information concerning all DWI arrests made by the city police department over the past twenty-four months. Thus, we find the submitted information is not representative of the information sought in the third category of the request. Please be advised this open records letter applies to only the types of information you have submitted for our review. Therefore, this opinion 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. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). Because you have not submitted information responsive to the third category of the request for our review, we assume you have released it. *See id.* §§ 552.301, .302. If you have not

released this information, you must do so at this time. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the requestor seeks information to be provided on an ongoing basis in the first and second categories of the request. It is implicit in several provisions of the Act that the Act applies only to information already in existence. Gov't Code §§ 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 city need not comply with the requests to provide information on an ongoing basis.

Next, we must address the city's obligations under the Act. Section 552.301 of the Government Code 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), 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). You state the city received the request for information on February 14, 2011. You also state the department is the record keeper of the requested information and it did not receive the request for information until March 1, 2011. You do not explain, however, how the city's tardiness in acquiring the records from the department altered the city's obligations under section 552.301(b). Accordingly, the city should have submitted its request for a ruling to this office by March 1, 2011. As the city submitted its request on March 7, 2011, we find it failed to comply with the requirements of section 552.301.

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 a compelling reason exists 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). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you assert Exhibit B is excepted under section 552.108 of the Government Code, this section is discretionary in nature. It serves only to protect a governmental body's interests, and may be waived; as such, it does not

constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Furthermore, the only information you seek to withhold under section 552.108 is the name of a specific arrestee, the dates of his arrest and release, and the alleged offense. This information is considered basic information for purposes of section 552.108. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information cannot be withheld from disclosure under section 552.108. *See* Gov't Code § 552.108(c) (section 552.108 does not except from disclosure basic information about arrested person, arrest, or crime). Thus, the marked portion of Exhibit B may not be withheld under section 552.108 of the Government Code. As you raise no other exceptions to disclosure for Exhibit B, it must be released in its entirety. However, because sections 552.101 and 552.117 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to Exhibit C.

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, such as section 58.007 of the Family Code which provides in relevant part:

(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.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03(a) (defining “delinquent conduct”). For purposes of section 58.007(c), a “child” is a person who is ten years of age or older and under seventeen years of age. *See id.*

§ 51.02(2). The records in Exhibit C pertain to a fifteen-year-old child who was allegedly driving a stolen vehicle and was taken into custody by the department on January 12, 2011. Thus, we find the report involves a child allegedly engaged in delinquent conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply to Exhibit C. Thus, Exhibit C is confidential in its entirety pursuant to section 58.007(c) of the Family Code, and the city must withhold it under section 552.101 of the Government Code.<sup>1</sup>

In summary, Exhibit B must be released. Exhibit C must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family 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](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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/eeg

Ref: ID# 417240

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure.