



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2011

Mr. Jesse Branick
Branick, Walston & Devenzio
221 Highway 69 South, Suite 100
Nederland, Texas 77627

OR2011-09712

Dear Mr. Branick:

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# 424476.

The Nederland City Clerk (the "city") and the Nederland Municipal Court Administrator (the "court"), both of which you represent, each received a request for the names and mailing addresses of individuals who received a citation in April 2011 and individuals "whose citations [have] gone into Alias Warrant status in March and April 2011 and their citation is currently in Alias Warrant status" at the time of the request.¹ You claim the requested information is not subject to the Act. In the alternative, we understand you to claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments.

You assert the requested information is not subject to the Act because it is maintained by the court and, thus, consists of records of the judiciary. Section 552.003(b) of the Government Code excludes the judiciary from the Act. 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). In this instance, the requestor requested records from the court as well as the city. Accordingly, to the extent the requested information is maintained solely by the court, it is not subject to release under the Act and need not be released in response

¹As you have not submitted a copy of the written request for information, we take our description from your brief.

to the present request.² 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 the requested information is also maintained by the city, the requested information is subject to the Act, and we will consider your arguments against disclosure.

Next, you state gathering the information would require four hours of overtime. 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 Act does not determine availability of information). The fact that it may be burdensome to provide the information at issue does not relieve a governmental body of its responsibility to comply with the Act. *Id.*; Open Records Decision No. 497 (1988). Thus, the city must release the requested information unless it falls within the scope of an exception to disclosure.

Next, we must address the city's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. See Gov't Code § 552.301(e). As of the date of this letter, you have not submitted to this office a copy of the written request for information or a copy or representative sample of the information requested. Consequently, we find the city has failed to comply with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption the requested information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. 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

²We note records of the judiciary also 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); Local 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).

statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Because you failed to submit any information for our review, we have no basis for finding it confidential under section 552.101 of the Government Code. Thus, to the extent the requested information or copies of the requested information are also maintained by the city, we have no choice but to order the city to release the requested information pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

In summary, to the extent the requested information is maintained solely by the court, it is not subject to release under the Act and need not be released in response to the present request. To the extent the requested information or copies of the requested information are also maintained by the city, the city must release it.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 424476

c: Requestor