



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2011

Ms. Donna L. Johnson
Olson & Olson, L.L.P.
For City of Jersey Village
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2011-13212

Dear Ms. Johnson:

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# 429727.

The City of Jersey Village (the "city"), which you represent, received a request for all citations entered into the city police department's Crimes Citation System from June 1, 2011 to June 26, 2011, to include thirteen categories of information. You claim the requested information is not subject to the Act. Alternatively, you claim the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor's attorney. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you state the requested information is not available in the format sought by the requestor, and the request requires the creation of a new document. We note the Act does not require a governmental body to answer factual questions, conduct legal research, or

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Additionally, the Act does not require a governmental body to release information that did not exist when it received a request. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1, 452 at 3 (1986), 362 at 2 (1983). In this instance, you state only that the city did not maintain a record in the format sought by the requestor, not that the data responsive to the request did not exist on the date of the request. On the contrary, the submitted information indicates that the city is in possession of the necessary data and has the capacity to respond to the request.

A request for public information that requires a governmental body to program or manipulate existing data is not considered to be a request for the creation of new information. *See* Gov't Code § 552.231; *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681-82 (Tex. App.—Eastland 2000, pet. denied) (plaintiffs' request required manipulation of existing data rather than creation of new information); Open Records Decision No. 661 at 6-7 (1999). Thus, if information that is otherwise available to a governmental body can be programmed or manipulated for the purpose of responding to a request for information, then the governmental body has access to information responsive to that request. Accordingly, while the city is not required to create a document in response to the request, documents from which the requested information may be derived would be responsive to this request. A government body must make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

Section 552.231 prescribes procedures that must be followed if, in responding to a request for information, a governmental body would be required to program or manipulate data. *See* Gov't Code § 552.231(a) (written statement described by section 552.231(b) shall be provided to requestor if governmental body determines (1) responding to request for information will require programming or manipulation of data and (2) compliance with request is not feasible or will result in substantial interference with ongoing operations or that information could be made available in requested form only at costs that cover programming and manipulation). A governmental body that fails to follow the requirements of section 552.231 is not released by that section from its obligation to provide the requested information or to seek a ruling from this office as to whether the information is excepted from disclosure. *See Fish*, 31 S.W.3d at 682. Thus, the city's officer for public information carries the duty of promptly producing such public information when it is requested, unless the city wishes to withhold the information. Gov't Code §§ 552.203, .221. Further, 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). In this instance, the city has submitted information that it has deemed to be responsive to the request. Accordingly, we will consider the city's arguments against disclosure.

You contend the city's traffic citations are not subject to the Act. The Act is applicable to information "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). 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). However, the Act's definition of "governmental body" "does not include the judiciary." Gov't Code § 552.003(1)(B). Information "collected, assembled, or maintained by or for the judiciary" is not subject to the Act, but instead is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) of the Government Code prior to enactment of section 552.0035 of the Government Code).

You argue that to the extent the request seeks information that is uploaded and held exclusively by the city's Municipal Court, it constitutes a record of the judiciary. We note, however, the present request went to the city, and seeks information created by and in the possession of the city. Accordingly, we conclude the requested is subject to the Act, and must be released, unless the city demonstrates that the information falls within an exception to public disclosure under the Act. *See* Gov't Code §§ 552.006, .021, .301, .302. Accordingly, we will consider your arguments against disclosure of the information at issue.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 58.007 of the Family Code, which provides in relevant 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, 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 or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). We note that section 58.007 does not make information relating to traffic offenses confidential. *See id.* §§ 51.02(16) (defining traffic offense), 51.03(a) (delinquent conduct does not include traffic offense), 51.03(b) (conduct indicating need for supervision does not include traffic offense). You inform us that the city’s police department not only issues citations for traffic offenses, but also issues citations for other multiple offenses.² You assert the information includes citations issued to minors for non-traffic related offenses, which is excepted from disclosure under section 58.007 of the Family Code. Accordingly, to the extent any of the requested information pertains to a non-traffic related offense involving a juvenile engaged in delinquent conduct or conduct indicating a need for supervision who was ten years of age or older and under seventeen years of age at the time the citation was issued, that information is confidential pursuant to section 58.007 of the Family Code and must be withheld under section 552.101 of the Government Code. However, to the extent the requested information does not involve a juvenile offender involved in a non-traffic related offense, the city may not withhold that information under section 552.101 on the basis of section 58.007.

Section 552.108 of the Government Code provides, in relevant part:

(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:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(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:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

²We note the requestor has excluded from his request traffic citations relating to minors. Thus, any such information within the requested information is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release such information.

Gov't Code § 552.108(a)(1), (b)(1). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution. Section 552.108(b)(1) protects internal law enforcement and prosecution records, the release of which would interfere with ongoing law enforcement and prosecution efforts in general. A governmental body claiming subsection 552.108(a)(1) or subsection 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the requested information relates to open investigations by the city's police department, and that the release of such information would unduly interfere with law enforcement and prosecution. Based on this representation and our review, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of crime, and agree that section 552.108(a)(1) is applicable. *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.*, 536 S.W.2d 559 (Tex. 1976).

As you acknowledge, section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the city may withhold the information at issue under section 552.108(a)(1) of the Government Code.³

In summary, to the extent any of the requested information pertains to a non-traffic related offense of a juvenile offender, the city must withhold that information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, the city may withhold the remaining information at issue under section 552.108(a)(1) of the Government 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, 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

³As our ruling is dispositive, we do not address your remaining claim against disclosure for this information, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

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,



Kirsten Brew

Assistant Attorney General
Open Records Division

KB/em

Ref: ID# 429727

Enc. Submitted documents

c: Requestor
(w/o enclosures)