



March 18, 1999

Ms. Kimberley Mickelson
Olson & Olson
333 Clay Street
Houston, Texas 77002

OR99-0766

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122816.

The City of Hedwig Village (the “city”) received a request for various information. You state that you have released information responsive to items 3 and 5 of the request. You claim, however, that certain issued and dismissed traffic citations are excepted from disclosure under section 552.101 of the Government Code.¹ You also claim that a list of all city residents is excepted from disclosure by section 552.101 in conjunction with the common-law right to privacy. We have considered your arguments and have reviewed the submitted sample information.²

The Open Records Act does not require a governmental body to make available information which does not exist, nor does it require a governmental body to prepare new information. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 (1992), 362 (1983). Nevertheless, the city must make a good faith effort to relate a request to information it

¹Section 552.101 of the Government Code excepts from disclosure “information deemed confidential by law, either constitutional, statutory, or by judicial decision.”

²We 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.

holds. Open Records Decision No. 87 (1975); *see* Gov't Code § 552.353 (providing penalties for failure to permit access to public information). It appears from your comments that the city maintains most of the requested traffic citations. The city must respond to items 1 and 2 of the request by providing the requestor with those responsive documents in its possession. The city may not deny a request simply because it is a burden to retrieve the requested information.

You also claim that certain traffic citations are being used in pending municipal court cases. We note that, pursuant to section 552.221(c) of the Government Code, the city must certify in writing to the requestor that the tickets are in "active use" and set a date and hour within a reasonable time when the requested information will be available for inspection or duplication.

You assert that traffic citations issued to juveniles are protected from disclosure under section 58.007 of the Family Code. Section 58.007 provides that law enforcement records concerning a child must not be publicly disclosed. Fam. Code § 58.007(c). We note, however, that section 58.007 does not make citations for traffic offenses confidential. *See* Fam. Code §§ 51.02(16) (definition of 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), 58.007(b) (section applies to records and files relating to child who is party to proceeding under Title 3 of Family Code). Since the requestor is specifically asking for traffic citations, we conclude that section 58.007 does not prohibit the city from releasing traffic citations issued to juveniles.³

You also assert that the traffic citations contain information that is excepted from public disclosure by a right of privacy under section 552.101. Section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). After reviewing your arguments, we do not believe that the city has established that the traffic citations at issue contain any information that is protected by common-law privacy. *See generally 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 at 2-3 (1992) (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

³We note that you have submitted information that is not responsive to the request for traffic citations. This ruling is limited to the requested traffic citation information.

We note, however, that some information contained in the traffic citations may be confidential by law. The Seventy-fifth Legislature added section 552.130 to the Open Records Act which governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[or]

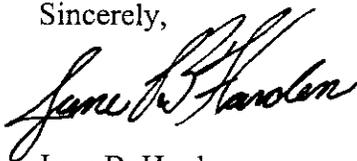
(2) a motor vehicle title or registration issued by an agency of this state[.]

We conclude that if the citations have been filed with the court, the information contained in the citations is considered public and must be released. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). If the citations have not been filed with the court, the city must withhold Texas driver's licenses and identification numbers from the requested records pursuant to section 552.130. The remaining information must be released.

Finally, you argue that a list of the names and addresses of Hedwig Village's residents is excepted from disclosure by common-law privacy. This office has previously concluded that the names and home addresses of private citizens are not "intimate" information and, therefore, are not protected from disclosure. See Open Records Decision Nos. 478 (1987), 455 (1987), 254 (1980). Therefore, the city must release a list of all city residents to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 122816

Enclosures: Submitted documents

cc: Mr. Tony Cantu
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(w/o enclosures)