



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

July 9, 2003

Mr. Robert E. Hager  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR2003-4733

Dear Mr. Hager:

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# 183983.

The City of Lancaster Police Department (the "department"), which you represent, received a request for a named police officer's credit report, medical records, income tax records for the last five years, marital status, and performance records. The requestor also seeks the video used at the time his traffic citation was issued, the serial number on the radar gun used in the traffic stop, the ticket book the police officer used when the requestor received his citation, and "a police report." You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You indicate that the department does not have the police officer's credit report or medical records. Your letters to this office do not mention the officer's income tax records. However, since you have not made arguments against the disclosure of income tax records or submitted income tax records to this office for review, we assume that the department does not have any such records. You also state that no police report exists for the traffic stop involving the requestor, other than the citation which has previously been provided to the requestor. We note that the Act does not require a governmental body to obtain information not in its possession in order to respond to a request for information, or prepare new information in response to a request. See Open Records Decision Nos. 558 (1990), 452 (1986), 342 (1982).

Section 552.117(2) excepts from disclosure certain personal information about an individual who meets the definition of "peace officer" in article 2.12 of the Code of Criminal Procedure. Information excepted from disclosure under section 552.117(2) includes information that reveals whether a peace officer has family members. Disclosing the marital status of the police officer named in the request for information would reveal whether he has family members. Therefore, the department must withhold the officer's marital status from disclosure under section 552.117(2).<sup>1</sup>

You contend that the police officer's performance reports are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. Section 552.101 of the Government Code excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. We understand that the City of Lancaster is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the police officer's civil service file maintained under section 143.089(a). The police officer's civil service file must also contain records relating to the periodic evaluation of the police officer by a supervisor. Local Gov't Code § 143.089(a)(3). Records placed in the police officer's civil service file under section 143.089(a) must generally be released to the public upon request, unless some provision of chapter 552 of the Government Code permits the civil service commission to withhold the information. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6. However, information maintained in a police officer's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

Although the department is required to withhold documents contained in the police officer's internal personnel file from disclosure under section 552.101, section 143.089(a)(3) requires that periodic evaluations of the officer's performance be maintained in his civil service file. Section 143.089(g) requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer the requestor to the civil service director or the director's designee. If the department has not already made this referral, it must do so immediately.

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<sup>1</sup>We note that in Open Records Decision No. 670 (2001), the attorney general determined that all governmental bodies may withhold the home address, home telephone number, personal cellular phone number, personal pager number, social security number, and information that reveals whether the individual has family members, of any individual who meets the definition of peace officer set forth in article 2.12 of the Code of Criminal Procedure, without the necessity of requesting an attorney general decision as to whether the exception under section 552.117(2) applies.

You contend that the video used at the time the requestor's traffic citation was issued, the serial number on the radar and/or laser gun used in the traffic stop, and the ticket book the police officer used when the requestor received his citation are excepted from disclosure under section 552.108(a)(1) and (2) of the Government Code. Section 552.108 of the Government Code provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

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(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the citation issued to the requestor has resulted in a criminal matter that is pending before the Lancaster Municipal Court. We agree that releasing the video footage of the requestor's traffic stop and the serial number of the radar and/or laser gun used in the traffic stop would interfere with the prosecution of the requestor's pending case. Therefore, the department may withhold this information from disclosure under section 552.108(a)(1).

You have not, however, explained how section 552.108(a)(1) or (2) applies to the remaining portions of the video or the ticket book. First, you have not stated that the remaining portions of the video or the traffic citations in the ticket book, other than the one issued to the requestor, relate to pending criminal matters, nor have you explained how the release of the remainder of the video or the ticket book would interfere with the investigation or prosecution of the requestor's case. *See* Gov't Code § 552.108(a)(1). Thus, you have not met your burden under section 552.108(a)(1). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred

adjudication. You have not explained how or if any of the cases related to the traffic stops on the video or the citations in the ticket book have actually concluded. Therefore, you may not withhold the remainder of the video or the ticket book from disclosure under section 552.108(a)(2).

You assert that the ticket book is also excepted from disclosure under section 552.103 of the Government Code. Section 552.103 provides as follows:

(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.

A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (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. *University of Tex. Law Sch. v. Texas 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). You have not explained how the ticket book relates to pending or reasonably anticipated litigation to which the department is a party. Furthermore, we have not received a representation from the entity with the litigation interest that it seeks to withhold the ticket book under section 552.103. Therefore, the ticket book is not excepted from disclosure under section 552.103.

Although the ticket book is not excepted from disclosure under the exceptions you have asserted, the ticket book does contain information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(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[.]

For each citation in the ticket book, section 552.130 protects information relating to the Texas driver's license and motor vehicle title or registration. We have marked the information in the ticket book that the department must withhold from disclosure pursuant to section 552.130.

Lastly, the remaining portions of the video contain information that must be withheld from disclosure under sections 552.130 and 552.119 of the Government Code. The video shows Texas license plate numbers that are excepted from disclosure under section 552.130 and must be withheld. Section 552.119 excepts from public disclosure a photograph of a peace officer<sup>2</sup> that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. Open Records Decision No. 502 (1988). The video contains images of peace officers and it does not appear that any of the exceptions are applicable. Unless the peace officers have executed any written consents to disclosure, the department must withhold the video images of the peace officers from disclosure under section 552.119. The department must redact the Texas license plate numbers and images of the peace officers from the video before releasing it. However, to the extent that the department does not maintain the technological capability to redact this information from the videotape, we conclude that the department must withhold the videotape from disclosure in its entirety.

In summary, the requested credit report, medical records, income tax records, and police report do not exist, and the department is not required to create or obtain these documents in order to respond to the request. The police officer's marital status must be withheld from disclosure under section 552.117(2). The department's internal personnel file on the police officer must be withheld from disclosure under section 552.101, but the department must refer the requestor to the civil service director. The video footage of the requestor's traffic stop and the serial number of the radar and/or laser gun may be withheld from disclosure under section 552.108(a)(1). Pursuant to sections 552.130 and 552.119, the department must redact the Texas license plate numbers and images of peace officers from the video before releasing it. To the extent that the department does not have the technological capability to

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<sup>2</sup>"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

redact this information from the videotape, the department must withhold the videotape from disclosure in its entirety. The marked information in the ticket book must be withheld from disclosure under section 552.130. The remaining information in the ticket book must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen Hattaway  
Assistant Attorney General  
Open Records Division

KEH/sdk

Ref: ID# 183983

Enc: Submitted documents and videotape

c: Mr. Rasan Farhoud  
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(w/o enclosures)