



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 22, 2004

Mr. Ken Johnson  
Assistant City Attorney  
City of Waco  
P. O. Box 2570  
Waco, Texas 76702-2570

OR2004-2158

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197884.

The City of Waco and the City of Waco Police Department (collectively, the "city") received thirteen requests from the same requestor for copies of various records of animal control complaints, inspection complaints, police records, and 9-1-1 calls referencing named individuals and specified addresses for particular periods of time. You state that the city does not possess information responsive to seven of the requests. You further state that you will release information responsive to two of the requests. However, you claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that the submitted information contains documents that may be judicial records. The Public Information Act (the "Act") only applies to information that is "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). It does not apply to records of the judiciary. *See id.* § 552.003(1)(B). Information that is "collected, assembled or maintained by . . . the judiciary" is not subject to the Act. *See id.* § 552.0035(a); *see also* Tex. Sup. Ct. R. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see*

*Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ); Open Records Decision No. 646 (1996) at 4 (“function that a governmental entity performs determines whether the entity falls within the judiciary exception to the Open Records Act.”). To the extent the information we have marked is maintained solely by the city’s municipal court acting in its judicial capacity, it constitutes judicial records that are not subject to disclosure under the Act and need not be released. *See* Attorney General Opinion DM-166 (1992); *see also* Open Records Decision No. 618 (1993) (acknowledging common-law right to copy and inspect certain judicial records). To the extent the information is not records of the judiciary, we will address your claimed exceptions.

We next note that one of the requests received by the city is a question of a factual nature. Section 552.002 of the Government Code defines public information as “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it.” The Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to a requestor. Open Records Decision No. 445 (1986). Nor does the Act require a governmental body to answer factual questions or to, in effect, respond to legal interrogatories. Open Records Decision No. 347 (1982). Therefore, the city need not respond to that particular request.

We now turn to the remaining requests for information. We note that the requestor requests, in part, criminal history record information involving himself and another named individual. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses the common-law right to privacy. Under *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), where an individual’s criminal history information has been compiled or summarized by a governmental entity, the information takes on a character that implicates the individual’s right of privacy in a manner that the same individual records in an uncompiled state do not. Thus, when a requestor asks for unspecified information concerning a certain named individual and that individual is a possible suspect, arrestee, or defendant, a law enforcement agency must withhold this information under section 552.101 because that individual’s privacy right has been implicated. *See id.* In this instance, we believe that the other named individual’s privacy rights have been implicated by some of the requests. Thus, any records in which the other named individual is identified as a suspect, arrestee, or defendant must be withheld under section 552.101 of the Government Code and the decision in *Reporters Committee*. We note that some of the requests also ask for information concerning a specific location. We believe that, in this regard, the request does not require the city to provide a compilation for purposes of *Reporters Committee* and therefore does not implicate the privacy rights of an individual.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a final result other than conviction or deferred adjudication. 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. Based on the information you provided, we understand you to assert that some of the requested information pertains to cases that concluded in a final result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to the information we have marked.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold the information at issue from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

We note that you also raise section 552.130 of the Government Code as an exception to disclosure. 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[.]

You must withhold the Texas license plate number we have marked under section 552.130.

In summary, to the extent the documents we have marked are judicial records, they are not subject to the Act and need not be released. To the extent the city possesses any records in which the other named individual is identified as a suspect, arrestee, or defendant, it must withhold such records under section 552.101 of the Government Code and the decision in *Reporters Committee*. With the exception of basic information, the city may withhold the information we have marked under section 552.108(a)(2) of the Government Code. The city must withhold the license plate number we have marked under section 552.130 of the Government Code. The city must release the remaining submitted information to the requestor.<sup>1</sup>

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<sup>1</sup> Some of the submitted documents contain or consist of confidential information that is not subject to release to the general public. See Gov't Code § 552.352. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because some of the information is

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

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confidential with respect to the general public, if the city receives a future request for this information from an individual other than the requestor or his authorized representative, the city should again seek our decision.

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,

A handwritten signature in black ink that reads "Jennifer E. Berry". The signature is written in a cursive style with a large initial "J" and "B".

Jennifer E. Berry  
Assistant Attorney General  
Open Records Division

JEB/lmt

Ref: ID# 197884

Enc: Submitted documents

c: Mr. Tony Tapp, Sr.  
1010 North 32<sup>nd</sup>  
Waco, Texas 76707  
(w/o enclosures)