



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 22, 2004

Mr. Kuruvilla Oommen  
Assistant City Attorney  
City of Houston - Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2004-6118

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205689.

The Houston Police Department (the "department") received a request for the racial profiling statistics of a named police officer during a specified time period. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted sample of information.<sup>1</sup>

Initially, you acknowledge, and we agree, that the department failed to seek an open records decision from this office within the statutory ten-day period. *See Gov't Code § 552.301(b)*. In addition, you failed to submit, within fifteen business days, the department's written comments explaining why its claimed exceptions apply and the requested records. *See Gov't Code § 552.301(e)(1)(A), (D)*. The department's delay in this matter results in the presumption that the requested information is public. *See id. § 552.302; Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ). In order to overcome the

---

<sup>1</sup> We 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.

presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. Since the applicability of section 552.101 provides such a compelling reason, we will address your argument against disclosure.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. You argue that the requested information is made confidential by articles 2.132(e) and 2.134(d) of the Code of Criminal Procedure.

Article 2.132 of the Code of Criminal Procedure requires each law enforcement agency in the state to “adopt a detailed written policy on racial profiling[.]” Code Crim. Proc. art. 2.132(b). Article 2.132 further provides that the policy must “require the agency to submit to the governing body of each county or municipality served by the agency an annual report of the information collected[.]” Code Crim. Proc. art. 2.132(b)(7). Finally, article 2.132 provides that such a required report “*may not include identifying information about a peace officer who makes a traffic stop or about an individual who is stopped or arrested by a peace officer.*” Code Crim. Proc. art. 2.132(e) (emphasis added).

Next, article 2.133 of the Code of Criminal Procedure provides in relevant part as follows:

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall report to the law enforcement agency that employs the officer information relating to the stop . . . .

Code Crim. Proc. art. 2.133(b). Article 2.134 provides in part that

[a] law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133 . . . [and] shall submit a report containing the information compiled during the previous calendar year to the governing body of each county or municipality served by the agency in a manner approved by the agency.

Code Crim. Proc. art. 2.134(b). Article 2.134 further provides that “[a] report required under Subsection (b) *may not include identifying information about a peace officer who makes a traffic or pedestrian stop or about an individual who is stopped or arrested by a peace officer.*” Code Crim. Proc. art. 2.134(d) (emphasis added). You explain that the statistical information was created pursuant to articles 2.132 and 2.133. Based on these code provisions, you argue that although the requested information on its face does not identify a particular peace officer, the production of responsive information in this instance would clearly identify the peace officer because the requestor asked for racial profiling statistics for a specific named police officer.

After considering your arguments and reviewing the information at issue, we agree that the release of the requested information would violate articles 2.132(e) and 2.134(d) of the Code of Criminal Procedure. The primary goal in statutory interpretation is ascertaining and effectuating the Legislature's intent. *In re Canales*, 52 S.W.3d 698, 702 (Tex. 2001). In discerning the Legislature's intent, we begin with a statute's plain language because we assume that the Legislature tried to say what it meant and, thus, that its words are the surest guide to its intent. *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999). "In applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of the statute *as it is written*." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) (emphasis added) (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex.1994)). We cannot ignore or contravene legislative intent. See *McKinney v. Blankenship*, 282 S.W.2d 691 (Tex. 1955) (a statute should not be construed so as to lead to a foolish or an absurd result); see also *State ex rel. Childress v. School Trustees of Shelby County*, 239 S.W.2d 777 (Tex. 1951), *Klevenhagen v. International Fidelity Ins. Co.*, 861 S.W.2d 13 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1993) (when interpreting statute, Court of Appeals may consider consequences of particular construction, and Court of Appeals will presume legislature intended fair, rational and reasonable result). Therefore, the release of this data in this instance would identify a particular peace officer and result in a violation of the code. Accordingly, we conclude that the department must withhold the requested information in its entirety under section 552.101 of the Government Code in conjunction with articles 2.132(e) and 2.134(d) of the Code of Criminal Procedure.

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,



Lauren E. Kleine  
Assistant Attorney General  
Open Records Division

LEK/seg

Ref: ID# 205689

Enc. Submitted documents

c: Mr. Kreston Dorsey  
P.O. Box 540757  
Houston, Texas 77254  
(w/o enclosures)