



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2005

Mr. Charles R. Kimbrough
Bickerstaff, Heath, Smiley, Pollan, Kever
& McDaniel, L.L.P.
816 Congress Avenue, Suite 1700
Austin, Texas 78701-2548

OR2005-09382

Dear Mr. Kimbrough:

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# 234314.

The City of Marble Falls (the "city"), which you represent, received a request for information relating to traffic citations issued during a specified period of time and various locations, as well as information regarding traffic control policies of the city.¹ You claim that some of the requested information is not subject to the Act. You claim, alternatively, that this information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note your statement that the documents at issue "were filed by a law enforcement agency with the Municipal Court for prosecution and adjudication as criminal lawsuits." To the extent the documents at issue consist of records of the municipal court, the

¹You note that part of this request for information consists of questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990)*. However, a governmental body must make a good-faith effort to relate a request to responsive information that is within its possession or control. *See Open Records Decision No. 561 at 8-9 (1990)*.

documents are records of the judiciary and are not subject to the Act.² See *id.* §§ 552.003(1)(A), (B) (definition of “governmental body” under Act specifically excludes the judiciary), .021 (Act generally requires disclosure of information maintained by “governmental body”). Thus, in the event the records at issue are maintained solely by the municipal court, they are not subject to release under the Act and need not be released in response to the present request. We note, however, that release of this information is within the discretion of the municipal court. See Open Records Decision No. 646 at 4 n. 3 (1996) (citing Open Records Decision No. 236 at 2-3 (1980)). To the extent the records at issue are maintained by the city, however, they are subject to the Act. Accordingly, we will address your claimed exceptions to disclosure with respect to information maintained by the city.

Section 552.103 of the Government Code 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.

Gov’t Code § 552.103. 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 was 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. *Univ. of Tex. Law Sch. v. Tex. 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). A governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

²Records of the judiciary may be public pursuant to other sources of law. 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); see *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).

You state that the citations listed in Exhibit E “are active, pending criminal cases on the docket of the Municipal Court.” We note, however, that once information has been obtained by all parties to litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). Thus, responsive information to which all of the parties in the pending litigation have previously had access is not excepted from disclosure under section 552.103(a), and it must be disclosed.³ Because the information in Exhibit D represents copies of citations that both law enforcement and the individual offenders have access to, we determine that the city may not withhold any of the information at issue pursuant to section 552.103 of the Government Code.

The city also asserts that the submitted information is excepted under section 552.108 of the Government Code, which provides the following:

(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;

....

(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 the requirements of Section 552.021 if:

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

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication;

³Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Gov't Code § 552.108. Generally speaking, sections 552.108(a)(1) and (a)(2) are mutually exclusive. Section 552.108(a)(1) protects information that pertains to a pending criminal investigation or prosecution. In contrast, sections 552.108(a)(2) and (b)(2) protect information relating to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. A governmental body claiming section 552.108(a)(1) 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). On the other hand, 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 indicate that some of the citations at issue “represent law enforcement information dealing with investigation or prosecution of a crime, or in the alternative internal records or notations of law enforcement relating to investigation or prosecution of a crime, that have not yet resulted in a conviction or deferred adjudication.” You state that the information in Exhibit E “shows the traffic citations that remain pending on the docket of the Municipal Court.” Based on your representations and our review, we determine that the release of the citations we have marked would interfere with the detection, investigation, or prosecution of crime, and we therefore agree that section 552.108(a)(1) is applicable to this information. *See Houston Chronicle*.

You also indicate that some of the submitted information pertains to criminal investigations that have concluded in a final result other than conviction or deferred adjudication. You advise that the information in Exhibit F “shows the traffic citations that have been dismissed from the docket of the Municipal Court.” We therefore agree that section 552.108(a)(2) is applicable to the citations we have marked.

You inform us that the citations listed in Exhibit G have “resulted in either a conviction or a deferred adjudication.” Thus, section 552.108 is not applicable to this information. Furthermore, because you have redacted the citation numbers of numerous citations in Exhibit D, we are unable to determine whether this information relates to a pending case or a case that concluded in a result other than conviction or deferred adjudication. Thus, none of the remaining information may be withheld under section 552.108.⁴

⁴In the future, you should refrain from blacking out any information that must be submitted to this office when seeking an open records ruling. *See* Gov't Code §§ 552.301(e)(1)(D) (a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples). A failure to properly submit requested information may result in the release of that information. *See* Gov't Code § 552.302 (governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption that the information at issue is public and must be released).

Finally, you note that the remaining submitted citations contain information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in pertinent part:

(a) Information is excepted from the requirements 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[.]

Gov't Code § 552.130. Accordingly, the city must withhold the information we have marked pursuant to section 552.130 of the Government Code.

In summary, to the extent the records at issue are maintained solely by the municipal court, they are not subject to release under the Act. In the alternative, the city may withhold the information we have marked under section 552.108 of the Government Code. The information marked must be withheld under section 552.130 of the Government Code. The city must release the remainder of the submitted information to the requestor.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 234314

Enc. Submitted documents

c: Mr. Les Bowles
700 Hwy 1431 E.
Marble Falls, Texas 78654
(w/o enclosures)