



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2007

Ms. Cindy J. Crosby
Bickerstaff, Heath, Pollan, & Caroom, L.L.P.
816 Congress Avenue, Suite 1700
Austin, Texas 78701

OR2007-08299

Dear Ms. Crosby:

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 #282422.

The City of Marble Falls (the "city") received a request for ten categories of information pertaining to the Nestor Speeding Detection Camera (the "camera"). The city has provided the requestor with a portion of the requested information. You state that there is no responsive information to four of the ten categories of requested information.¹ You claim that the information responsive to the request for copies of all tickets issued by the camera is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, you explain that although the request was for all tickets issued by the camera, the camera only issues Notices of Violations ("notices"). These notices are divided into two categories: (1) those that pertain to pending investigations and have not been filed with the municipal court, and (2) those that have been filed with the municipal court. The city asserts section 552.101 of the Government Code with common law privacy and section 552.130 of the Government Code for the notices that have been filed with the municipal court. The city

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

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.

asserts sections 552.103 and 552.108 of the Government Code for the notices that have not been filed with the municipal court.

Information filed with a court is generally a matter of public record under section 552.022(a)(17) of the Government Code and may only be withheld if expressly confidential under other law. *See* Gov't Code § 552.022(a)(17) (information contained in public court record is not excepted from required disclosure under Act unless expressly confidential under other law). Because section 552.130 is "other law" for purposes of section 552.022, we will address your argument regarding this section for the information subject to section 552.022. We note that information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, the city may not withhold the court-filed information based on section 552.101 of the Government Code in conjunction with common-law privacy.

You seek to withhold Texas-issued driver's license numbers and Texas-issued license plate numbers and plate years from the court-filed documents. Section 552.130 of the Government Code excepts from disclosure information that "relates to ... a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130(a). Accordingly, the city must withhold the Texas-issued driver's license numbers and license plate information that we have marked in the court-filed notice contained within Exhibit F under section 552.130. The remaining information must be released. We now turn to the city's assertions regarding the notices that have not been filed with the municipal court.

Section 552.103 of the Government Code provides in relevant part 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 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), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103 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 that 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 section 552.103.

We note that the city is currently a party to litigation that is either pending or reasonably anticipated, depending on when the notices were issued and received by the violator. Thus, we agree that the city was involved in or reasonably anticipated litigation related to these notices on the date it received the present request for information. Furthermore, we find that the notices are related to pending or anticipated litigation. We note, however, that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We therefore conclude that because these notices are inevitably received by the opposing party to the litigation, no section 552.103(a) interest exists with respect to the notices, and they may not be withheld under this section.

You also assert that the notices that have not been filed with a court are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See Govt Code* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the notices relate to pending prosecutions. However, because a copy of each notice is given to each offender, the city has not shown how release of these notices to the public interferes with the pending prosecutions. Therefore, the city may not withhold the notices that have not been filed with a court from disclosure under section 552.108.

We note that the notices that have not been filed with a court also contain information subject to section 552.130 of the Government Code, as discussed above. Accordingly, the city must withhold the Texas-issued license plate information that we have marked in the notice contained within Exhibit E under section 552.130. The remaining information must be released to the requestor.

In summary, with the exception of Texas-issued driver’s license and license plate information that we have marked under section 552.130 of the Government Code, the city must release 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/jb

Ref: ID# 282422

Enc. Submitted documents

c: Mr. Eddie G. Shell
Shell & Shell
6000 North Highway 281
Marble Falls, Texas 78654
(w/o enclosures)