



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2008

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2008-05296

Dear Ms. Sims:

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# 307750.

The City of Lubbock (the "city") received a request for information pertaining to all red-light ticket recipients who are delinquent in payment. You state that the city has released some of the information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You argue that the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 707.006 of the Transportation Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by other statutes. Gov't Code § 552.101. Section 707.006 provides:

- (a) A local authority shall operate a photographic traffic control signal enforcement system only for the purpose of detecting a violation or suspected violation of a traffic-control signal.
- (b) A person commits an offense if the person uses a photographic traffic signal enforcement system to produce a recorded image other than in the manner and for the purpose specified by this chapter.
- (c) An offense under this section is a Class A misdemeanor.

Transp. Code § 707.006. We note that section 707.006 does not expressly make information confidential. In order for section 552.101 to apply, a statute must contain language expressly making certain information confidential. *See* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987), 465 at 4-5 (1987). Confidentiality cannot be implied from the structure of a statute or rule. *See* ORD 465 at 4-5. Accordingly, the city may not withhold any portion of the submitted information from disclosure pursuant to section 707.006 of the Transportation Code in conjunction with section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Personal financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body). You claim that the information pertaining to the amount owed by individuals for running red lights is protected by common-law privacy. Upon review, we determine that none of the information at issue is protected by common-law privacy. Accordingly, the city may not withhold any of the submitted information under section 552.101 of the Government Code on this basis.

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), (c). The city 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, 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). The city must meet both prongs of this test for information to be excepted under section 552.103(a).

You state that the city may impose a civil penalty for violations of the ordinance pertaining to automated traffic signals. You argue that litigation is anticipated and pending. However, we note that the information at issue pertains to unpaid citations that have been sent to collection. Upon review of your arguments and the submitted information, we conclude that you have failed to demonstrate either that the city reasonably anticipated litigation or that litigation was pending when it received the request for information. Accordingly, the information at issue may not be withheld under section 552.103 of the Government Code.

Section 552.130(a)(2) of the Government Code exempts from disclosure information that relates to a Texas motor vehicle title or registration. Gov't Code § 552.130(a)(2). The city must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Benjamin A. Diener
Assistant Attorney General
Open Records Division

BAD/eeg

Ref: ID# 307750

Enc. Submitted documents

c: Mr. Clif Burnett
7109 NCR 1520
Shallowater, Texas 79363
(w/o enclosures)