



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2008

Mr. Miguelangel Matos
Denton, Navarro, Rocha & Bernal
2517 North Main Avenue
San Antonio, Texas 78212

OR2008-07216

Dear Mr. Matos:

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# 311158.

The City of Jourdanton (the "city"), which you represent, received a request for the "citation book for [the] officer working on Wednesday, March 5, 2008 between 7:00pm and 8:00pm . . . and issued a citation for speeding. . . ." You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have submitted information which is not responsive to the present request. The request seeks information pertaining to a specified time frame. Accordingly, any information which does not pertain to this specified time frame is not responsive to the request. This ruling does not address the public availability of the information we have marked as non-responsive, and you need not release such information in response to the request.

Next, we must address the city's obligations under section 552.301 of the Government Code. This section prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request for information, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information;

(3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See* Gov't Code § 552.301(e)(1)(A)-(D). You inform us that the city received this request for information on March 14, 2008 and that city offices were closed for a holiday on March 21, 2008. Based on these dates, the city's fifteen-business-day deadline under section 552.301(e) was April 7, 2008. However, we note that the submitted copy of the request for information bears a date-stamp of March 6, 2008 as well as a date-stamp of March 14, 2008. Calculated from March 6, 2008, the city's fifteen-business-day deadline was March 28, 2008. Thus, if the city received the request for information on March 6, then the requested information submitted to this office which bears a postmark of April 7, 2008 was not timely under section 552.301(e). Based upon the discrepancy between the two date-stamps in the submitted request for information, we are unable to determine the date the city received the request for information. Therefore, because you have not informed us of, or provided sufficient evidence to establish, the specific date when the city received the request for information, we find that the city failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Although you raise sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions that protect a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold any of the submitted information under section 552.103 or section 552.108 of the Government Code. However, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address your arguments under these exceptions.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which

protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find that the city has failed to explain how any portion of the submitted citation constitutes highly intimate or embarrassing information the release of which would be highly objectionable to a reasonable person. Thus, we conclude that no portion of the submitted information is protected by common-law privacy, and it may not be withheld under section 552.101 on this basis.

Section 552.130 of the Government Code excepts from disclosure information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. We note that section 552.130 only applies to Texas motor vehicle record information. Therefore, the city may not withhold the out-of-state motor vehicle record information under section 552.130. As you raise no further exceptions to disclosure, the remaining responsive information must be released to the requestor.¹

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

¹We note that section 552.147 (b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 311158

Enc. Submitted documents

c: Ms. Patricia J. Elizabeth Tymrak-Daughtrey
2701 Zanderson Avenue, No. 608
P.O. Box 23
Jourdanton, Texas 78026
(w/o enclosures)