ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 24, 2014

Ms. Dana D. Huffman
1143 Rockingham, Suite 107
Richardson, Texas 75080

OR2014-03326

Dear Ms. Huffman:

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# 514761.

The City of Waxahachie (the "city"), which you represent, received a request for complaints and reports pertaining to two named individuals, any animals belonging to the two named individuals, and any individuals who live within 500 yards of the named individuals and their animals. You claim the requested information is not subject to the Act. Alternatively, you claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.[1] We have considered your arguments and reviewed the submitted information.

Initially, you contend the requested information is not subject to the Act because the request is too vague and the city does not assemble information responsive to the request. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

[1]Although you also raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002. Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *See id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987).

Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify. This office has stated a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision Nos. 561 at 8-9 (1990), 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982), 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974). A request for records made pursuant to the Act may not be disregarded simply because a citizen does not specify the exact documents he desires. ORD 87. We note if a request for information is unclear, a governmental body may ask the requestor to clarify the request. Gov't Code § 552.222(b); *see also* Open Records Decision Nos. 561 at 8 (1990), 333 (1982). This office has also stated the Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information not held by or on behalf of the city. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

Upon review, we conclude the submitted information was written, produced, assembled, or maintained in connection with the transaction of official business by city employees in their official capacities. Thus, the submitted information is subject to the Act. Further, we note you have only submitted two citations to this office. Thus, to the extent any additional

responsive documents existed on the date the city received the request, the city must release such information to the requestor. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply, then it must release information as soon as possible).

Section 552.103 of the Government Code provides:

> (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.
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> . . .
>
> (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 governmental body has the burden of providing relevant facts and documents to show 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 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). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

We note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information related to litigation through the discovery process. *See* Open Records Decision No. 551 at 4-5. Thus, any information obtained from or provided to all other parties in the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Upon review, we find the submitted citations have been provided to the individual cited. Accordingly, the city may not withhold this information under section 552.103 of the Government Code.

Section 552.108(a)(1) of the Government Code 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[.]" Gov't Code § 552.108(a)(1). As previously noted, because copies of the submitted citations have been provided to the individual who was

cited, we find that release of the citations will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the city may not withhold the submitted citations under section 552.108(a)(1). As no further exceptions to disclosure have been raised, the submitted information must be released to the requestor.[2]

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 514761

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[2]We note the requestor has a right of access to some of her client's information being released pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) ("[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a) without the necessity of requesting a decision under the Act. *See* Gov't Code § 552.130(c). Therefore, if the city receives another request for the same information from a person who would not have a right of access to the requestor's client's private information, section 552.130(c) authorizes the city to redact this requestor's client's motor vehicle record information without requesting another ruling.