



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2014

Ms. Jennifer W. DeCurtis
Counsel for the City of Heath
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6351 Preston Road, Suite 350
Frisco, Texas 75034

OR2014-14354

Dear Ms. DeCurtis:

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# 533154.

The City of Heath (the "city"), which you represent, received a request for an "electronic bulk traffic and criminal traffic violation data file." You claim the requested information is excepted from disclosure under sections 552.108, 552.117, 552.130, and 552.142 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you note the requestor seeks a "monthly update file" every month going forward. It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 87 (1975). Consequently, a governmental body is not required to comply with a standing request to supply information prepared in the future. *See*

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the only information encompassed by the present request consists of information the city maintained or had a right of access to as of the date it received the request.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] 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[.]

Gov't Code § 552.108(a)(1)-(2). Generally, section 552.108(a)(1) is mutually exclusive of section 552.108(a)(2). Section 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body claiming an exception under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You assert the report of individuals who received a criminal citation potentially falls under each of these exceptions. You argue that because “some of the violations are not yet adjudicated, it is possible that the citation could potentially be dismissed, which would result in investigations that do not result in conviction or adjudication.” You further assert, releasing individual names of violators who have not decided whether to take their issue to trial or to a defensive driving school would interfere with prosecution.” You also argue that because some of the records are more than twenty years old and generally may be past the statute of limitations, these records should be withheld because the city’s database does not have a function to cull out which records did not result in conviction or adjudication and therefore it would be impossible to determine which records to redact. You contend this information is inextricably intertwined within this report and cannot be easily redacted. We note, administrative inconvenience is not a ground for non-compliance with a request for information under chapter 552 of the Government Code. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976); Open Records Decision No. 663 at 4

(1999). Because you have not specified which portions of the information at issue pertain to pending cases and which pertain to closed cases that did not result in conviction or deferred adjudication, we find you have failed to demonstrate the applicability of section 552.108 to the submitted information. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Therefore, we conclude the city may not withhold any portion of the information at issue under either section 552.108(a)(1) or section 552.108(a)(2) of the Government Code.

Section 552.142 of the Government Code is applicable to records of certain deferred adjudications. Section 552.142 provides as follows:

(a) Information is excepted from [required public disclosure] if an order of nondisclosure with respect to the information has been issued under Section 411.081(d).

(b) A person who is the subject of information that is excepted from [required public disclosure] under this section may deny the occurrence of the arrest and prosecution to which the information relates and the exception of the information under this section, unless the information is being used against the person in a subsequent criminal proceeding.

Id. § 552.142. Section 411.081(d) of the Government Code authorizes a person placed on deferred adjudication for certain offenses to petition the court for an order of nondisclosure, which prohibits criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication. *Id.* § 411.081(d). Under this provision, a criminal justice agency may only disclose criminal history record information that is the subject of the order to other criminal justice agencies, for criminal justice or regulatory purposes; non-criminal justice agencies listed in section 411.081(i); or the person who is the subject of the order. *Id.* Although you generally assert the information may be excepted from public disclosure pursuant to section 552.142, you have not explained, or provided any documentation showing an order of nondisclosure was issued pursuant to section 411.081(d) of the Government Code prohibiting the release of the information at issue. Thus, we find you have failed to demonstrate the applicability of section 552.142 to the information, and the city may not withhold it on that basis.

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code, and the same information belonging to several additional categories of government agents that require no election. *See id.* § 552.117. Section 552.117 only applies to records that the governmental body is holding in an employment capacity. Upon review, we find the

city does not maintain the requested traffic and criminal traffic violation data in an employment capacity. Therefore, the city may not withhold any information under section 552.117.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. *Id.* § 552.130(a). Accordingly, the city must withhold the information we have marked under section 552.130 of the Government Code.

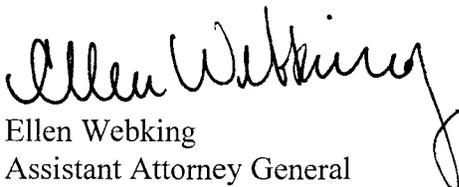
The requestor asserts that he has a right of access under the Driver's Privacy Protection Act of 1994 (the "DPPA"), 18 U.S.C. § 2721. The DPPA limits the release of personal information collected by the Texas Department of Public Safety (the "DPS") in connection with motor vehicle records. 18 U.S.C. §§ 2721-2725; Attorney General Opinion JC-0499 at 1 (2002). This office has concluded that the DPPA applies to information in the possession of the DPS. Attorney General Opinion JC-0499 at 2. Here, the information is in the possession of the city. Thus, the DPPA is inapplicable.

In summary, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.

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,


Ellen Webking
Assistant Attorney General
Open Records Division

EW/ac

Ref: ID# 533154

Enc. Submitted documents

c: Requestor
(w/o enclosures)