



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2014

Ms. Evelyn W. Kimeu
Staff Attorney
City of Houston
1200 Travis
Houston, Texas 77002-6000

OR2014-18836

Dear Ms. Kimeu:

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# 540140 (ORU No. 14-5030).

The Houston Police Department (the "department") received a request for 1) a specified citation; 2) information related to the locations in which department officers are stationed; 3) specified log book entries made by two specified police officers for a specified date; 4) a map detailing the department's jurisdiction; 5) a list of instances in the last year in which the department was accused of issuing a citation outside of its jurisdiction; 6) department citation issuance policies in effect on a specified date; 7) information related to the demographics of people stopped and cited by the specified police officers within a specified time period; and 8) police physical results and certificates of competency of the specified police officers. You claim the submitted information is not subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note section 552.0055 of the Government Code provides that "[a] subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under this chapter." Gov't Code § 552.0055. This section does not apply in all instances in which a governmental body could have received such a subpoena or discovery request. *See*

Fitzgerald v. Advanced Spine Fixation Sys., Inc., 996 S.W.2d 864, 865-66 (Tex. 1999) (in interpreting statutes, goal of discerning legislature's intent is served by beginning with statute's plain language because it is assumed that legislature tried to say what it meant and its words are therefore surest guide to its intent); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) (“In applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of the statute as it is written.” (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex.1994))).

The request reflects the request for information pertaining to categories three through eight above is a discovery request made pursuant to article 39.14 of the Code of Criminal Procedure. Crim. Proc. Code art. 39.14 (the state shall produce and permit the inspection of information related to a defendant's case). Accordingly, the request for information related to categories three through eight is not a written request for public information that triggers the Act. Because the Act is not implicated, we will not address your claimed exceptions to disclosure for the information sought under the discovery request pertaining to categories three through eight. However, category one and category two of the request for information were made under the Act. Accordingly, we will consider your arguments as they pertain to the information that is responsive to the first two categories of the request.

We must address the department's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). The department received the request for information on July 30, 2014. As of the date of this letter, you have not submitted to this office a copy or representative sample of information responsive to category one or category two of the request. Accordingly, we conclude the department failed to comply with the requirements of section 552.301 of the Government Code with regard to information responsive to the first two categories of the request.

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 the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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 section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Therefore, we have no choice but to order the information responsive to the first two categories of the request released pursuant to section 552.302.

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,



Joseph Behrke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 540140

Enc. Submitted documents

c: Requestor
(w/o enclosures)