



February 15, 2000

Mr. Miles K. Risley
Senior Assistant City Attorney
Legal Department
City of Victoria
P O Box 1758
Victoria, Texas 77902-1758

OR2000-0534

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132242.

The City of Victoria (the "city") received a request for the arrest warrant, charges filed, and associated paperwork concerning a named individual arrested on October 4, 1999. You indicate you have released some information responsive to the request. You have provided for our review additional responsive information. You assert that the additional information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you assert and reviewed the submitted information.

Section 552.108 of the Government Code provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 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; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In support of your contention that the information is excepted from disclosure by section 552.108, you state:

The records involve a pending criminal case of Burglary of Habitation that was prosecuted by the Victoria County District Attorney. On November 29, 1999, [the named individual] pled guilty and received 12 month deferred adjudication. Under deferred adjudication, if the defendant violates the terms of his probation, he may be sentenced by the judge to any sentence within the sentencing range of the crime for which he pled guilty. Therefore, this case is currently pending and will be pending until November 29, 2000, when [the named individual's] period of deferred adjudication expires.

As the defendant has entered a plea with the court and received a sentence, neither the investigation nor the prosecution of the matter is pending. You have not otherwise explained how release of the requested information would interfere with the detection, investigation or prosecution of crime. The documents do not contain information relevant to the probation of the named individual. Rather, the documents contain information relevant to the investigation of the crime for which the named individual pleaded guilty. Thus, the documents do not explain on their face how and why their release would interfere with law enforcement. Accordingly, we conclude that you may not withhold the information under subsection 552.108(a)(1) or (b)(1). Subsections 552.108(a)(2) and (b)(2) are not applicable because the case has concluded in a result of deferred adjudication. You have not shown the applicability of subsections 552.108(a)(3) and (b)(3). Thus, we conclude the information is not excepted from disclosure by section 552.108.

You also assert section 552.103 of the Government Code, the "litigation exception." To show that section 552.103(a) is applicable, the city must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas 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). You do not indicate that litigation is pending. To demonstrate that litigation is reasonably anticipated, the city must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986). The mere possibility that the named individual may violate the terms of the probation is mere conjecture, which we determine is alone insufficient to find that litigation is reasonably anticipated. Therefore, the information is not excepted from disclosure by section 552.103. Except as otherwise noted herein, we conclude you must release the information.

We note that the documents contain social security number information. The social security numbers in the documents may be confidential if they were obtained or are maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(vii); see Open Records Decision No. 622 (1994). The documents also contain driver's license numbers. Section 552.130 of the Government Code excepts information that

relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Thus, you must withhold the driver's license numbers, which we have marked, under section 552.130.¹

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 appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

¹We have not marked for redaction the driver's license number of the requestor. We believe section 552.130 is intended to protect the privacy of the subject of the information. Thus, a requestor's own section 552.130 information is not excepted from disclosure. *See also* Gov't Code § 552.023 (a person has a special right of access to information that relates to that person and that is otherwise excepted from disclosure by laws intended to protect that person's privacy).

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,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a large initial "M" and a long horizontal stroke at the end.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/jc

Ref: ID# 132242

Encl. Submitted documents

cc: Mr. Charles Benys
P O Box 366
Inez, Texas 77968
(w/o enclosures)