



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

July 24, 2003

Mr. Ronald D. Stutes  
Attorney at Law  
Brown & Hofmeister, L.L.P.  
1717 Main Street, Suite 4300  
Dallas, Texas 75201

OR2003-5109

Dear Mr. Stutes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184817.

The Town of Flower Mound (the "town"), which you represent, received a request for twelve categories of information relating to a particular citation, to certain complaints, and to a named animal control officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We first note that some of the submitted information consists of completed evaluations that are subject to release pursuant to section 552.022(a)(1) of the Government Code. Section 552.022 makes "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" public information unless it is expressly made confidential under other law or "except as provided by [s]ection 552.108[.]" Gov't Code § 552.022(a)(1). You do not claim section 552.108 for this information. We note that section 552.103 is a discretionary exception under the Public Information Act (the "Act") and therefore, is not "other law" that makes the completed investigation confidential. *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 No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential). Therefore, you may not withhold any of the completed evaluations from disclosure under section 552.103 of the Government Code.

We now turn to your claim under section 552.103 in relation to the submitted information that is not subject to section 552.022. Section 552.103 provides in pertinent part:

(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.

....

(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). A governmental body that raises section 552.103 has the burden of providing relevant facts and documents to show that the 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 that the governmental body received the request for information and (2) the information at issue is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *see also 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); Gov't Code § 552.103(c). The town must meet both prongs of this test for information to be excepted under section 552.103(a).

You represent to this office that the information at issue relates to a criminal prosecution that is pending in the town's municipal court. You indicate that the prosecution was pending when the town received this request for information. We find that the town has established that criminal litigation was pending when it received this request for information. However, after reviewing your representations and the information at issue, we find that you have not demonstrated that the submitted personnel information relates to the pending prosecution. *See* Open Records Decision Nos. 551 at 5 (1990) (attorney general will determine whether governmental body has reasonably established that information at issue is related to litigation), 511 at 2 (1988) (information "relates" to litigation under section 552.103 if its release would impair governmental body's litigation interests). Therefore, we find that the town may not withhold any of the personnel information under section 552.103.

However, some of the submitted personnel information is excepted under section 552.101. Section 552.101 also encompasses information protected by the common-law right of privacy. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public under common-law privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See id.* at 685; *see also* Open Records Decision No. 611 at 1 (1992). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-

law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance, designation of beneficiary of employee's retirement benefits are generally confidential), 545 (1990) (common-law privacy protects personal financial information pertaining to voluntary financial decisions and financial transactions not involving public funds). We have marked the private financial information that must be withheld under section 552.101.

The submitted documents also contain other personal information of the individual whose employment records are at issue. Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body may only withhold information under section 552.117 on behalf of an employee if he or she made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received. In this case, one of the submitted documents reflects that the employee timely elected to keep her home address, telephone number, and social security number confidential. Therefore, the town must withhold this information under section 552.117. It is unclear whether the employee timely elected to keep her family member information confidential. Accordingly, the town must withhold the information you have marked to the extent that section 552.117 applies. We have marked some additional information that must be withheld to the extent that section 552.117 applies.

Furthermore, section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Therefore, we agree that the town must withhold the information that you have marked within the documents at issue under section 552.130, with the exception of the information we have marked for release. We have marked some additional information that must also be withheld under section 552.130.

We now turn to your claim under section 552.108 of the Government Code. Section 552.108 provides in pertinent 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

...

Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) 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 the detection, investigation or prosecution of crime. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You represent to this office that the information pertaining to the offense, arrest, and probable cause affidavit relates to the above-mentioned criminal prosecution that is pending in the town's municipal court, and that release of the information would interfere with the investigation or prosecution of crime. Based on these representations, we conclude that the release of this information, which we have marked, "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 at 3 (1978). Therefore, section 552.108(a)(1) is applicable to this information.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Company*, 531 S.W.2d 177. In Open Records Decision No. 127 (1976), this office summarized the types of information made public pursuant to *Houston Chronicle*. *See* Open Records Decision No. 127 at 3-4 (1976). The town must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of an offense report. Thus, with the exception of basic information, the town may withhold the information that we have marked based on section 552.108(a)(1).

We note that the identity of complainants is generally considered basic information. Open Records Decision 127 at 4. You claim that the complainants' identifying information in this case should not be released pursuant to the informer's privilege under section 552.101.<sup>1</sup> *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App 1969); Open Records Decision Nos. 582 (1990), 515 (1988). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). However, the informer's privilege does not categorically protect from release the identification and description of a complainant. The identity of a complainant, whether an "informant" or not, may only be withheld upon a showing that special circumstances exist. *See* Open Records Decision No. 169 (1977).

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<sup>1</sup> Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the common-law informer's privilege.

This office considers “special circumstances” to refer to a very narrow set of situations in which the release of information would likely cause someone to face “an imminent threat of physical danger.” *Id.* at 6. Such “special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.* Based upon the information provided to this office in this instance, however, we find that you have not shown special circumstances sufficient to overcome the presumption of public access to the complainants’ identities. Consequently, we conclude that the town may not withhold information identifying the complainants, as it constitutes relevant front page information. We note, however, that a complainant’s telephone number and address are generally not front page offense report information and need not be released.<sup>2</sup>

In summary, you may withhold the information we have marked pursuant to section 552.108, with the exception of basic information. We have marked the private financial information that must be withheld under section 552.101 in conjunction with the common-law right to privacy. You must withhold the home address, telephone number, social security number, and family member information contained in the personnel documents under section 552.117 to the extent that a timely election under section 552.024 was made. You must withhold the Texas driver’s license and motor vehicle information under section 552.130. The remaining submitted information must be released.

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

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<sup>2</sup> In any case, we note that we were unable to locate any other information identifying complainants in the submitted documents.

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 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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/lmt

Ref: ID# 184817

Enc. Submitted documents

c: Mr. David M. Deleranko  
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(w/o enclosures)