



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 24, 2008

Mr. Ross Fischer  
City Attorney  
City of Seguin  
205 North River Street  
Seguin, Texas 78155

OR2008-05534

Dear Mr. Fischer:

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# 308547.

The Seguin Police Department (the "department") received a request for information related to the death of a named individual. You state that some responsive information will be provided to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You inform us that the department asked the requestor for clarification of a portion of the request. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You do not inform us that the requestor has responded to this request for clarification; therefore, the department is not required to release any responsive information for which it sought clarification. But if the requestor responds to the clarification request, the department must seek a ruling from this office before withholding any responsive information from the requestor. *See* Open Records Decision No. 663 (1999) (ten-business-

day deadline tolled while governmental body awaits clarification). Since you have been able to identify certain types of records that you believe fall within the scope of the request, we will address your arguments for these records.

We note that section 552.022 of the Government Code is applicable to some of the submitted information. Section 552.022(a)(1) provides for required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]” unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov’t Code § 552.022(a)(1). In this instance, the submitted information includes a completed report that is subject to section 552.022(a)(1). Section 552.103 is a discretionary exception, and not other law that makes information expressly confidential for the purposes of section 552.022(a)(1). *See id.* § 552.007; *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. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the completed report that we have marked may not be withheld under section 552.103. However, the department claims that the completed report is excepted under section 552.108; therefore, we will consider the department’s claim under section 552.108 for that information, as well as for the remaining information not subject to section 552.022 for which the department claims section 552.108. We also will consider the department’s claim under section 552.103 with respect to the remaining information that is not subject to section 552.022(a)(1).

You claim that the submitted records in Exhibits D and E, including the completed report that is subject to section 552.022(a)(1), are excepted from public disclosure under section 552.108(a)(1) of the Government Code. Section 552.108 of the Government Code exempts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the records at issue relate to pending criminal investigations being conducted by the Texas Rangers and the Twenty-fifth Judicial District Attorney’s Office. Based upon this representation, we find that the release of the information in Exhibits D and E would interfere with the detection, investigation, or prosecution of crime. *See 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). Thus, section 552.108(a)(1) is applicable in this instance.

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d

at 186-88. The department must release basic information even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the department may withhold the information in Exhibits D and E, including the completed report that is subject to section 552.022(a)(1), under section 552.108(a)(1) of the Government Code.<sup>1</sup>

~~You assert that the remaining information is excepted from public disclosure under section 552.103 of the Government Code, which provides as follows:~~

(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). The governmental body has the burden of providing relevant facts and documents to show that 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, 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 552.103(a).

In order to establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* In Open

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<sup>1</sup>As we are able to make this determination, we need not address your remaining argument for Exhibits D and E, except to note that section 552.103 of the Government Code generally does not except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

Records Decision No. 638 (1996), this office stated that a governmental body has met its burden of showing that litigation is reasonably anticipated when it received a notice of claim letter and the governmental body represents that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act ("TTCA"), chapter 101 of the Texas Civil Practice & Remedies Code, or an applicable municipal ordinance. If a governmental body does not make this representation, the claim letter is a factor that this office will consider in determining whether a governmental body has established that litigation is reasonably anticipated based on the totality of the circumstances. Concrete evidence to support a claim that litigation is reasonably anticipated may also include a potential opposing party hiring an attorney who makes a demand for disputed payments and threatens to sue if the payments are not made promptly. *See* Open Records Decision No. 346 (1982).

We understand you to assert that the department reasonably anticipates litigation relating to the subject of the present request. You state and provide documentation showing that the City of Seguin (the "city") received notice of a claim asserted against the city by the requestor, an attorney for the claimant, on the date you received this request for information. You do not affirmatively represent to this office that the claim letter is in compliance with the TTCA. You inform us, however, that the claim letter alleges that the city and the department were negligently responsible for the death of the named individual, and the claimants are demanding monetary damages as settlement for the claims. After reviewing your arguments and the remaining documents, and based on the totality of the circumstances, we agree that the department reasonably anticipated litigation on the date the department received the request for information. Moreover, we find that the information in Exhibit F and the department's use of force and domestic violence policies in Exhibit G are related to the anticipated litigation. We therefore conclude that the department may withhold that information under section 552.103.<sup>2</sup> You fail to demonstrate, however, how the remaining administrative policies in Exhibit G are related to the anticipated litigation. Therefore, section 552.103 is inapplicable to the remaining policies.

We note, however, that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all other parties in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded or is no longer realistically anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, with the exception of basic information, the department may withhold the information in Exhibits D and E, including the completed report that is subject to section 552.022(a)(1), under section 552.108(a)(1) of the Government Code. The

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<sup>2</sup>As section 552.103 is dispositive, we do not address your remaining argument for this information.

department may also withhold under section 552.103 of the Government Code the information in Exhibit F and the department's use of force and domestic violence policies in Exhibit G. The remaining submitted information must be released to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge 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 Office of the Attorney General 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. 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/mcf

Ref: ID# 308547

Enc. Submitted documents

c: Mr. Alfonso Otero  
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San Antonio, Texas 78205  
(w/o enclosures)