



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 20, 2008

Mr. Kerry O'Brien  
Knight & Partners  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

OR2008-06861

Dear Mr. O'Brien:

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# 312737.

The Leander Police Department (the "department"), which you represent, received two requests for information pertaining to a specified criminal investigation, including its related internal administrative investigation, as well as all information pertaining to the requestor. You state that some of the information has been released pursuant to a previous request for information, and that no more information has been created or come into the possession of the department since those documents were released. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup> We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

You inform us that the information pertaining to the investigation of the three juvenile suspects was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2007-14994 (2007). In Open Records Letter No. 2007-14994, we determined that the requestor has a right of access to her client's

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<sup>1</sup>The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990)*. However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See Open Records Decision No. 561 at 8 (1990)*. You inform us that the department has made a good faith effort to do so.

information pursuant to section 58.007(e) of the Family Code, but that the identifying information of the other two juvenile suspects must be redacted pursuant to section 58.007(j)(1) of the Family Code. The requestor now asserts that she represents the parents of all three juveniles; therefore, pursuant to section 58.007(e) of the Family Code, the department must release the requested information pertaining to the juvenile suspects that was previously redacted pursuant to Open Records Letter No. 2007-14994. *See generally* Open Records Decision No. 673 (2001).

We next note that some of the submitted reports are subject to section 552.022 of the Government Code. Under section 552.022(a)(1), a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Although you assert this information is excepted under section 552.103 of the Government Code, this section is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. *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. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). Accordingly, the department may not withhold the completed reports under section 552.103. However, we will address your arguments to withhold some of these reports under section 552.108. *See* Gov't Code § 552.301(a)(1).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that Exhibit E, which consists of case report numbers 306105.1 and 302656.1, pertains to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) 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 Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front-page offense and arrest information, the department may withhold case report numbers 306105.1 and 302656.1 under section 552.108(a)(2).

You assert that the remaining information is excepted under section 552.103 of the Government Code, which provides in part 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 for information 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 section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. See Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.<sup>2</sup> Open Records Decision No. 555 (1990); see Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. See Open Records Decision No. 331 (1982).

You argue that the requestor intends to file suit against the department for civil rights violations, libel, and similar torts, and that the remaining information may be relevant in such anticipated litigation. However, you have failed to establish that the requestor has taken objective steps toward filing litigation. As stated above, the public threat of suit,

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<sup>2</sup>In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, see Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, see Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, see Open Records Decision No. 288 (1981).

without objective steps toward filing suit, is not sufficient to show that litigation is reasonably anticipated. *See* ORD 331. Thus, after review of your arguments and the information at issue, we find you not established that the department reasonably anticipated litigation when it received the requests for information; therefore, the department may not withhold the remaining information under section 552.103 of the Government Code.

We note that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The requestor has a right of access to her own information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) ("a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). The department must withhold the Texas motor vehicle record information of other individuals that we have marked under section 552.130. The submitted DVD recordings also contain Texas license plate numbers pertaining to individuals other than the requestor. Accordingly, this information must be redacted pursuant to section 552.130; however, if the department is unable to redact this information from the submitted recordings, then the recordings must be withheld in their entirety pursuant to section 552.130. *See* Open Records Decision No. 364 (1983).

To conclude, pursuant to section 58.007(e) of the Family Code, the department must release the requested information pertaining to the juvenile suspects that was previously redacted pursuant to Open Records Letter No. 2007-14994. With the exception of basic information, the department may withhold case report numbers 306105.1 and 302656.1 under section 552.108 of the Government Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The department must also withhold the Texas license plate numbers pertaining to individuals other than the requestor in the submitted DVD recordings under section 552.130; however, the department must withhold the recordings in their entirety if it is unable to redact the portions of the recordings that reveal this information. The department must release the remaining information.<sup>3</sup>

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

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<sup>3</sup>We note that the submitted information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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).

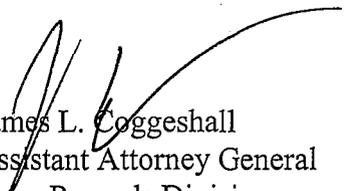
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jh

Ref: ID# 312737

Enc. Submitted documents

c: Ms. Carolyn Barnes, P.C.  
112 East Main Avenue  
Round Rock, Texas 78664  
(w/o enclosures)