



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 31, 2009

Mr. Stephen L. Rohde  
Evans, Rohde, & Criswell  
P.O. Drawer L  
Tulia, Texas 79088

OR2009-04173

Dear Mr. Rohde:

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# 338532.

The City of Tulia (the "city"), which you represent, received a request for all information pertaining to the arrest and detention of a named individual on a specified date. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.117, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that portions of the submitted information are subject to section 552.022 of the Government Code. 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 documents include completed reports by the Tulia Police Department. These reports must be released under section 552.022(a)(1) unless they are expressly confidential under other law or excepted from disclosure under section 552.108. Although you seek to withhold the reports under section 552.103 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *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.) (section 552.103 may be waived by governmental body); Open Record Decision Nos. 665 at 2 n.5)

(discretionary exceptions). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the city may not withhold the remaining submitted information that is subject to section 552.022 under section 552.103. However, you claim that a portion of this information that is subject to section 552.022 is excepted from disclosure under sections 552.101, 552.117, and 552.147 of the Government Code, which are other law for purposes of section 552.022. Accordingly, we will consider the applicability of these exceptions to the remaining submitted information. Further, we will also address your argument under section 552.103 for the information that is not subject to section 552.022(a)(1).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Some of the submitted information consists of incident reports involving juvenile delinquent conduct occurring after September 1, 1997. None of the exceptions in section 58.007 appear to apply. Therefore, this information, which we have marked, is confidential pursuant to section 58.007(c) of the Family Code and the city must withhold it under section 552.101 of the Government Code.

Next, you assert that some of the remaining information is excepted under section 552.117 of the Government Code. Section 552.117(a)(2) excepts the home addresses and telephone numbers, social security numbers, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024 of the Government Code. Gov't Code

§ 552.117(a)(2); *see* Open Records Decision No. 622 (1994). However, no portion of the remaining information consists of a peace officer's home address and telephone number, social security number, or family member information. Therefore, no portion of the remaining information may be withheld under section 552.117 of the Government Code.

You also seek to withhold a portion of the remaining information under section 552.147(b) of the Government Code, which 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. However, we note the requestor, as attorney for the individual at issue, has a special right of access to the individual's social security number pursuant to section 552.023 of the Government Code. Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Thus, no portion of the remaining information may be withheld under section 552.147 of the Government Code. Accordingly, with the exception of the information we have marked under section 552.101 in conjunction with section 58.007, the remaining information that is subject to section 552.022(a)(1) must be released to the requestor.

Finally, we will address your argument under section 552.103 of the Government Code for the remaining information. Section 552.103 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>1</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).

In this instance, you assert that the city reasonably anticipated litigation pertaining to the subject of the request. You state that the requestor is an attorney representing a potential party to this anticipated litigation, and that the requestor informed the city that she was requesting the information in connection with a possible suit against the city. Based on your representations, we conclude that you have established that litigation was reasonably anticipated when the city received the request at issue. We also find that the information at issue is related to the anticipated litigation. Thus, the city may withhold the remaining information not subject to section 552.022(a)(1), which we have marked, under section 552.103 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The city may withhold the information we have marked under section 552.103. The remaining information must be released to the requestor.

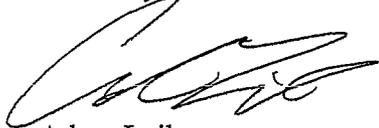
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>1</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).

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/jb

Ref: ID# 338532

Enc. Submitted documents

c: Requestor  
(w/o enclosures)