



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2009

Ms. Jenny Gravely
Taylor, Olson, Adkins, Sralla, Elam, LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2009-04915

Dear Ms Gravely:

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# 339984.

The City of Cockrell Hill (the "city"), which you represent, received two requests from the same requestor for fifteen categories of information relating to city code violations at a specified address. You claim that the information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted information responsive to item nos. 8, 10, and 13 of the requests. To the extent such information exists, we presume that the city has released it. If not, the city must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000) (stating that governing body must produce public information promptly).

Next, we note that some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides that:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by section 552.108;

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(15) information regarded as open to the public under an agency's policies; [and]

...

(17) information that is also contained in a public court record[.]

Gov't Code §§ 552.022(a)(1), (3), (15), (17). In this instance, the submitted information includes a completed incident report made of, for, or by a governmental body. The city must release this information subject to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 or is expressly confidential under other law. The submitted information also includes copies of insurance policies that are subject to section 552.022(a)(3) and a search warrant subject to section 552.022(a)(17). The city must release the information that is subject to sections 552.022(a)(3) and (17) unless it is expressly confidential under other law. The submitted information also contains copies of city job descriptions, which are usually open to the public as part of a job posting and subject to section 552.022(a)(15). If the city regards the submitted job descriptions as open to the public, then the city must release this information unless it is expressly confidential under other law. You claim that the information at issue is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. However, sections 552.103 and 552.108 are discretionary exceptions that protect a governmental body's interests and, thus, are not "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 Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Accordingly, the information subject to sections 552.022(a)(3), (15), and (17) may not be withheld on the basis of section 552.103 or section 552.108. In addition, the information subject to section 552.022(a)(1) may not be withheld on the basis of section 552.103. However, information subject to section 552.022(a)(1) may be withheld under section 552.108; thus we will address your argument under section 552.108 with respect to the completed incident report. Furthermore, because section 552.130 can provide a compelling reason to withhold information, we will consider your argument under this

exception for the information subject to section 552.022. We will also address your argument under section 552.103 for the remaining information that is not subject to section 552.022.

Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] 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 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *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 state that the incident report relates to a pending criminal prosecution of a code violation in the city’s municipal court. Based on this representation, we conclude that the release of this information 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. 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).

Section 552.108, however, 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 city must release basic information, including a detailed description of the offense, 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*).

We note that the submitted insurance policies contain Texas motor vehicle record information subject to section 552.130 of the Government Code. This section excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov’t Code § 552.130(a)(1), (2). Thus, the city must withhold the information we have marked that relates to a Texas motor vehicle license, title, or registration pursuant to section 552.130.

We now address your argument under section 552.103 of the Government Code for the information not subject to section 552.022. Section 552.103 provides in relevant 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). A 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 was 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 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551.

In this instance, you state that the remaining information is related to pending litigation. You state, and provide documentation showing, that the requestor has filed a lawsuit against the city on behalf of the individual who was the subject of the city's code enforcement in the instant case. Upon review, we determine that the city has established that litigation was pending on the date that it received the request for information. Further, we determine that the remaining information is related to the pending litigation. Accordingly, we conclude that section 552.103 of the Government Code is generally applicable to the remaining information at issue.

We note, however, that the information at issue contains a citation and notices of code violations that were issued to the individual who is the subject of the pending case. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, if the opposing party has seen or had access to information relating to litigation, through discovery or otherwise, then there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, to the extent the requestor's client has seen or had access to the submitted information, any such information is not protected by section 552.103 and may not be withheld on that basis. With the exception of such information, the city may withhold the remaining information under section 552.103 of the Government Code. However, the applicability of section 552.103(a) ends when the litigation has concluded or is no longer pending. *See* Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982).

In summary, (1) with the exception of basic information, the city may withhold the incident report under section 552.108 of the Government Code; (2) the city must withhold the Texas motor vehicle record information that we have marked under section 552.130 of the

Government Code; and (3) with the exception of the information subject to sections 552.022(a)(3), (15), and (17), and the information previously seen by the requestor's client, the city may withhold the remaining information at issue under section 552.103 of the Government Code.¹

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.

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, 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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/sdk

Ref: ID# 339984

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note that the information being released contains the requestor's client's Texas motor vehicle record information. The requestor has a right of access to his client's Texas motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a), (b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on the grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).