



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 5, 2009

Mr. Jason Rammel
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2009-07733

Dear Mr. Rammel:

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# 345127.

The City of Hutto (the "city"), which you represent, received a request for information related to a specified complaint. You claim the requested 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.

Section 552.108(a) of the Government Code excepts 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). 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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note the submitted information includes copies of citations. Because the citations have been provided to the individuals who were cited, we find release of this information will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the city may not withhold the citations, which we have marked, under section 552.108(a)(1). You state the submitted information relates to a pending criminal investigation. Based on this representation and our review, we conclude section 552.108(a)(1) is applicable to the remaining information. *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).

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. Therefore, 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*). Thus, with the exception of the submitted citations and basic information, the city may withhold the submitted information under section 552.108(a)(1).

We next address your claim under section 552.103 of the Government Code for the submitted citations and basic information. Section 552.103 provides in 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). The city has the burden of providing relevant facts and documents to show 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 university 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 city must meet both prongs of this test for information to be excepted under section 552.103(a).

You explain the submitted citations are related to criminal complaints filed against the requestor, her husband, and their landlord, and relate to past and continuing violations of the

city's Code of Ordinances. You state that litigation to which the city may be a party was pending on the date of the request. We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information that is related to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. The submitted citations were provided to the individuals who was cited; thus, the citations were inevitably seen by the opposing parties to the litigation. Therefore, the submitted citations may not be withheld under section 552.103 of the Government Code. We also note that 552.103 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). Therefore, the basic information may not be withheld under section 552.103 of the Government Code.

We note portions of the submitted citations are subject to section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. We note, however, that section 552.130 protects privacy interests. Thus, the requestor has a right of access to her own Texas driver's license information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a). Furthermore, if the requestor is seeking the information on behalf of her spouse, then she also has a right of access to his Texas motor vehicle record information pursuant to section 552.023. If the requestor is not seeking the information as her spouse's authorized representative, then the city must withhold his Texas driver's license information, which we have marked, under section 552.130. In either event, the city must withhold the marked Texas driver's license information not belonging to the requestor or her spouse under section 552.130.

In summary, with the exception of basic information and the marked citations, the submitted information may be withheld under section 552.108 of the Government Code. To the extent the requestor is not acting as the authorized representative of her spouse, his marked Texas driver's license information must be withheld under section 552.130 of the Government Code. In either event, the marked Texas driver's license information that does not belong to the requestor or her spouse must be withheld under section 552.130. The remaining information in the submitted citations must be released.²

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note that some of the information being released is confidential and not subject to release to the general public. Because such information may be confidential with respect to the general public, if the city receives another request for this information from an individual other than this requestor, the city should again seek our decision.

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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 345127

Enc. Submitted documents

cc: Requestor
(w/o enclosures)