



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 22, 2009

Mr. Charles Brancaccio  
Assistant County Attorney  
Johnson County  
204 South Buffalo Avenue, Fourth Floor, Suite 410  
Cleburne, Texas 76033-5404

OR2009-13306

Dear Mr. Brancaccio:

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# 355930.

The Johnson County Sheriff's Office (the "sheriff") received a request for information related to the issuance of a specified citation. You state you do not have information responsive to portions of the request.<sup>1</sup> You also state you have redacted a social security number pursuant to section 552.147 of the Government Code.<sup>2</sup> You claim 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.

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 a citation. Because the citation has been provided to the individual who was cited, we find release of this information will not interfere with the

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<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>A governmental body may redact social security numbers without seeking a determination from this office. Gov't Code § 552.147(b).

detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1). Therefore, the sheriff may not withhold the citation, which we have marked, under section 552.108(a)(1). You state the remaining information relates to a pending criminal investigation and prosecution. Based on this representation and our review, we conclude release of the remaining information would interfere with the detection, investigation, or prosecution of a crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14<sup>th</sup> 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, with the exception of the citation, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code.

We next address your claim under section 552.103 of the Government Code for the submitted citation. 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 sheriff 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 sheriff 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 sheriff must meet both prongs of this test for information to be excepted under section 552.103(a).

The sheriff explains the submitted citation relates to pending litigation. 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 citation was provided to the individual who was cited; thus, the citation was inevitably seen by the opposing party to the

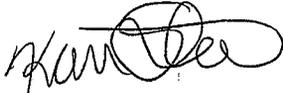
litigation. Therefore, the submitted citation may not be withheld under section 552.103 of the Government Code.

In summary, with the exception the citation, the submitted information may be withheld under section 552.108(a)(1) of the Government Code. The submitted citation must be released.<sup>3</sup>

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](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, toll free, at (888) 672-6787.

Sincerely,



Karen E. Stack  
Assistant Attorney General  
Open Records Division

KES/jb

Ref: ID# 355930

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the information being released includes the requestor's client's Texas driver's license and license plate information, which would ordinarily be withheld under section 552.130 of the Government Code. However, because this information belongs to the requestor's client, it may not be withheld in this instance. See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). If the sheriff receives another request for this particular information from a different requestor, then the sheriff should again seek a decision from this office.