



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 1, 2009

Ms. Katie Lentz  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2009-16923

Dear Ms. Lentz:

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# 362835.

The Williamson County Sheriff's Office (the "sheriff") received a request for all records pertaining to a named individual, including case numbers 09-01-3242 and 290113014. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted any information pertaining to case number 290113014. We assume that, to the extent information pertaining to that case number existed at the time the request was received, it has been released to the requestor. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), 302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

You assert the submitted information is excepted from public disclosure under section 552.108 of the Government Code. 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 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). You represent, and the documents reflect, that the submitted information relates to a case currently pending prosecution as cause number 09-954-K26 with the Williamson County District Attorney's Office. Based on your

representations and our review, we conclude release of most of the submitted 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. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). However, the submitted information includes a criminal trespass warning that was issued to the individual subject to the warning. You do not explain, nor can we discern, how release of the criminal trespass warning, that was already provided to the criminal defendant, will interfere with the detection, investigation, or prosecution of this crime. *See* Gov't Code § 552.108(a)(1). We therefore conclude that the criminal trespass warning, which we have marked, may not be withheld under section 552.108.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information and the marked criminal trespass warning, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

You also raise section 552.103 of the Government Code, which 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). 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* Open Records Decision No. 551 at 4-5 (1990). A governmental body has the burden of providing relevant facts and documents to show that

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<sup>1</sup>Because section 552.108 is dispositive, we need not address your other claimed exceptions for this information except to note that basic information generally may not be withheld under section 552.103. *See* Open Records Decision No. 597 (1991) (basic information not excepted under section 552.103).

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. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *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.); ORD 551 at 4. A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The submitted information reflects criminal litigation was anticipated or pending by the Williamson County District Attorney's Office at the time the request was received. We also find the criminal trespass warning relates to this litigation. However, once information is obtained from or provided to all the opposing parties in the litigation, there is no interest in withholding that information under section 552.103. See Open Records Decision Nos. 349 (1982), 320 (1982). Thus, because the criminal trespass warning has been provided to the individual being prosecuted, we conclude there is no interest in withholding the submitted warning under section 552.103. Accordingly, the criminal trespass warning must be released.

In summary, basic information and the marked criminal trespass warning must be released. The sheriff may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 362835

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)