



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2010

Ms. Savita Rai
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2010-05857

Dear Ms. Rai:

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# 376950 (COSA File No. ORR#10-0173).

The City of San Antonio (the "city") received a request for all records concerning the proposed demolition at a specified address. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, 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:

¹We note that although you raise section 552.107 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that section 552.107 applies to the submitted information.

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

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

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

Gov't Code § 552.022(a)(1), (15), (17). In this instance, the submitted information includes completed reports that are subject to section 552.022(a)(1), previously published legal notices that are subject to section 552.022(a)(15), and court-filed documents that are subject to section 552.022(a)(17). The city may only withhold the information subject to subsection 552.022(a)(1) if it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under other law. The city may only withhold the information subject to subsections 552.022(a)(15) and 552.022(a)(17) if it is confidential under other law. Although you seek to withhold the information subject to section 552.022 under section 552.103 of the Government Code, that 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.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not "other law" that makes information expressly confidential for purposes of subsections 552.022(a)(1), 552.022(a)(15), and 552.022(a)(17). Therefore, the completed inspection reports, the published legal notices, and the court-filed documents, which we have marked, may not be withheld under section 552.103. You claim a portion of the information subject to subsection 552.022(a)(1) is excepted from disclosure under section 552.108. Accordingly, we will consider your argument under section 552.108 for this information. We will also consider your arguments under sections 552.103, 552.108, and 552.111 for the information that is not subject to section 552.022.

Next, we will address your argument under section 552.108 for portions of the submitted information. Section 552.108 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue relates to a site of habitual criminal activity,

and criminal investigations are ongoing by the city's police department. Based on your representation, we conclude that section 552.108(a)(1) is applicable in this instance. 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. 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 basic information, the city may withhold the information we have marked under section 552.108(a)(1).²

The city claims the remaining submitted information not subject to section 552.022 is excepted from disclosure under section 552.103 of the Government Code, which provides in relevant 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). 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 is pending or reasonably anticipated on the date the governmental body received the request for

²As our ruling is dispositive for the information subject to section 552.108(a)(1), we do not address your remaining claim against disclosure, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

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).

You inform us, and provide documentation showing, that prior to the city's receipt of the request for information, the city was named as a defendant in a lawsuit concerning the demolition of the property at the specified address, and the lawsuit is currently on appeal. We, therefore, agree that litigation was pending on the date the city received the request. We also find that the information at issue is related to the litigation for purposes of section 552.103. Accordingly, we conclude section 552.103 is generally applicable to the information in the litigation file.

We note, however, that once an opposing party in pending litigation has seen or had access to information that is related to litigation, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, the information the opposing party in the pending litigation has seen or had access to is not excepted from disclosure under section 552.103(a) and must be disclosed. In this instance, some of the information at issue consists of communications with the opposing party and documents sent to both the city and the opposing party. Therefore, as the opposing party has already seen or had access to this information, which we have marked, it may not be withheld under section 552.103 of the Government Code. However, the city may withhold the remaining information not subject to section 552.022, which we have marked, under section 552.103.³

In summary, with the exception of basic information, the city may withhold the information we have marked under section 552.108(a)(1) of the Government Code. The city may also withhold the information we have marked under section 552.103 of the Government Code. 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.

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

³As our ruling is dispositive of this information, we need not address your remaining argument against disclosure.

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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 376950

Enc. Submitted documents

c: Requestor
(w/o enclosures)