



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 4, 2010

Mr. Art Pertile, III  
Olson & Olson, L.L.P.  
2727 Allen Parkway, Suite 600  
Houston, Texas 77019

OR2010-08131

Dear Mr. Pertile:

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# 381615 (City of Stafford # COS10-005).

The City of Stafford (the "city"), which you represent, received a request for information pertaining to a specified incident. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides 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 the governmental body 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state that prior to the city's receipt of this request the requestor filed a lawsuit against the city, and the lawsuit is currently pending in the 434<sup>th</sup> District Court of Fort Bend County. You further state the submitted information is related to the pending litigation because it pertains to the claims in the lawsuit. Accordingly, we find that litigation was pending when the city received this request for information and that the information at issue relates to the pending litigation. Therefore, section 552.103 is generally applicable to the remaining information.

We note, however, basic factual information about a crime must be released. Open Records Decision No. 362 (1983). Information normally found on the front page of an offense report is generally considered public, and must be released. *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.); see Open Records Decision No. 127 (1976). Basic information includes the identification and description of the complainant as well as a detailed description of the offense. See ORD 127. A portion of the submitted information consists of a report of a criminal incident. Thus, with the exception of basic information from the incident report, the city may withhold the submitted information under section 552.103 of the Government Code.

We note once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. See Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information at issue that has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. We note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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,



Jennifer Luttrall

Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 381615

Enc. Submitted documents

c: Requestor  
(w/o enclosures)