



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2010

Mr. R. Brooks Moore
General Counsel
The Texas A&M University System
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2010-08798

Dear Mr. Moore:

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# 388628.

Texas A&M University (the "university") received a request for information pertaining to a specified incident. You state you have released some of the requested information. 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 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 inform us, and have provided a letter from the Brazos County Attorney stating, that the submitted information is related to a pending criminal case. Based on your representations, we conclude that section 552.108(a)(1) is generally applicable to the submitted 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).

We note that the submitted information includes a statutory warning. Because a copy of that document is provided to the person who is the subject of the warning, we find that the release of the statutory warning will not interfere with the detection, investigation, or prosecution

of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the university may not withhold the statutory warning, which we have marked, under section 552.108(a)(1).

We note, and you acknowledge, that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 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; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The university must release basic offense and arrest information, even if the information does not literally appear on the front page of an offense or arrest report. Except for the statutory warning, and basic information, the university may withhold the submitted information under section 552.108(a)(1).

You also raise section 552.103 of the Government Code, which 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). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

We note that 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* ORD 551 at 4-5. If the opposing party has seen or had access to information relating to pending or anticipated litigation, through discovery or otherwise, then there is no interest in withholding that information from public disclosure under

section 552.103. See Open Records Decision Nos. 349 (1982), 320 (1982). You inform us that the statutory warning is related to a pending prosecution. Thus, because the statutory warning was provided to the defendant in the pending prosecution, the opposing party in the litigation has already seen that information. Furthermore, 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). Therefore, the university may not withhold any of the remaining information under section 552.103 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. See Gov't Code § 552.130(a)(1). The university must withhold the Texas driver's license number we have marked under section 552.130.¹

In summary: (1) except for the statutory warning and basic information, the submitted information may be withheld under section 552.108(a)(1). The marked Texas driver's license in the statutory warning must be withheld under section 552.130 of the Government Code. The rest of the submitted information must be released.

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

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

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¹We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130, without the necessity of requesting an attorney general decision.

Ref: ID# 388628

Enc. Submitted documents

cc: Requestor
(w/o enclosures)