



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2010

Ms. Martha T. Williams
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2010-09308

Dear Ms. Williams:

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# 384131.

The City of Jersey Village (the "city"), which you represent, received a request for the disciplinary history and complaints, or internal affairs investigations concerning six named police officers. You state some of the requested information will be released with redactions pursuant to section 552.147(b) of the Government Code and Open Records Decision No. 684 (2009).¹ 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.

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they were created after the date the request was received. The city need not release nonresponsive information in response to this request, and this ruling will not address that information.

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

You assert Exhibit B is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). We note, and you acknowledge, Exhibit B pertains to an internal affairs investigation. Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you indicate the internal affairs investigation in Exhibit B involved a criminal investigation. You explain that, while criminal charges were filed and an arrest was made, those charges were subsequently dismissed. Thus, you contend the criminal investigation in Exhibit B concluded in a result other than conviction or deferred adjudication. Based on your representations and our review, we conclude section 552.108(a)(2) is generally applicable to Exhibit B.

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 Publishing 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). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold Exhibit B pursuant to section 552.108(a)(2) of the Government Code.²

You assert the remaining responsive information is excepted from disclosure under section 552.103 of the Government Code, which provides:

- (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.

...

²As we are able to resolve this issue under section 552.108, we do not address your remaining claim against disclosure of Exhibit B, except to note that basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

(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 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 of the governmental body's receipt of the request, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas 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 state, and submit documentation demonstrating, that prior to the city's receipt of the request for information, litigation was pending in the Harris County Criminal Court No. 9. You further state the remaining responsive information is related to the pending litigation because the information at issue is "directly related to or will be used as evidence" in the pending litigation. 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 responsive 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*, 531 S.W.2d 177; see ORD127. 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 remaining 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 remaining responsive information under section 552.103 of the Government Code.³

We note, however, that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the case at issue is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded or is no longer

³As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, with the exception of basic information, the city may withhold Exhibit B pursuant to section 552.108(a)(2) of the Government Code. With the exception of the basic information in the incident report, the city may withhold the remaining responsive information under section 552.103 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, 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# 384131

Enc. Submitted documents

c: Requestor
(w/o enclosures)