



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 1, 2011

Ms. M. Ann Montgomery-Moran
Assistant County and District Attorney
Ellis County
109 South Jackson
Waxahachie, Texas 75165

OR2011-07685

Dear Ms. Montgomery-Moran:

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# 421679.

The Ellis County Sheriff's Office (the "sheriff") received a request for (1) basic information pertaining to the prosecution of the requestor's client and (2) any book-in report created separately from the offense report. You claim the requested 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that you have not submitted any information responsive to the second category of the request. Thus, to the extent any information responsive to the requested book-in report information existed when the sheriff received the request, we assume you have released it. If you have not released any such information to the requestor, you must do so at this time. *See id.* §§ 552.301(a), 552.302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note that most of the submitted documents are not responsive to the request for information because they do not consist of basic information. *See* Open Records Decision No. 127 (summarizing types of information considered to be basic information). This ruling

does not address the public availability of any information that is not responsive to the request, and the sheriff is not required to release that information in response to the request. Thus, we only address your arguments for the requested basic information.

You assert the requested basic information is excepted from disclosure under section 52.108 of the Government Code. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Section 552.108(b) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]” *Id.* § 552.108(b)(1). However, section 552.108 is inapplicable to 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). ORD 127. Thus, the sheriff may not withhold the basic information under section 552.108(a)(1) or 552.108(b)(1).

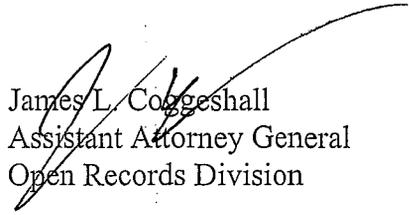
You also assert the responsive basic information is excepted from disclosure pursuant to section 552.103 of the Government Code, which excepts from disclosure “information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party[.]” Gov’t Code § 552.103(a). You assert that “[t]he requestor’s request is an attempt to utilize the Public Information Act to circumvent the rules of discovery in criminal litigation” and also that “[t]he use of the Open Records Act [sic] as a means of discovery in civil or criminal cases is prohibited by Section 552.103[.]” However, this office has previously determined section 552.103 does not except from disclosure basic information held to be public in *Houston Chronicle*. See Open Records Decision Nos. 633 at n.4 (1995), 597 at 3 (1991) (predecessor statute), 362 at 2 (1983) (predecessor statute), 208 at 3 (1978) (predecessor statute), 139 at 2 (1976) (predecessor statute). Accordingly, the sheriff may not withhold the responsive basic information under section 552.103 of the Government Code. Therefore, the sheriff must release the responsive basic information 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

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 421679

Enc. Submitted documents

c: Requestor
(w/o enclosures)