



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2011

Mr. Robert J. Davis
Matthews, Stein, Shiels, Pearce, Knott, Eden, & Davis, L.L.P.
8131 LBJ Freeway, Suite 700
Dallas, Texas 75251

OR2011-07875

Dear Mr. Davis:

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# 419970 (File No. 1600/63981).

Collin County (the "county"), which you represent, received a request for information relating to a specified incident involving two named individuals. 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 information you submitted.¹

We first note the submitted information includes a court document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Thus, the court document we have marked is subject to disclosure under section 552.022(a)(17). Although you seek to withhold the court document under sections 552.103 and 552.108 of the Government Code, those sections are discretionary exceptions to disclosure that protect a governmental body's interests and may

¹To the extent the submitted information consists of representative samples, this letter ruling assumes any such information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the county to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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 Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, sections 552.103 and 552.108 are not other law that makes information expressly confidential for purposes of section 552.022(a)(17). Therefore, the marked court document may not be withheld under section 552.103 or section 552.108 and must be released pursuant to section 552.022(a)(17) of the Government Code.

Next, we address your claim for the rest of the submitted information under section 552.103 of the Government Code. This exception 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 section 552.103 bears the burden of providing relevant facts and documents sufficient to demonstrate the applicability of this exception to the information at issue. The governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of the governmental body's receipt of the request for information, and (2) the requested information is related to the pending or anticipated litigation. *See 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.). 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).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish litigation is reasonably anticipated, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *Id.* This office has concluded a governmental body's receipt of a claim it represents to be in compliance with the notice requirements of the Texas Tort Claims Act (the "TTCA"),

chapter 101 of the Civil Practice and Remedies Code, is sufficient to establish litigation is reasonably anticipated. If this representation is not made, then receipt of the claim letter is a factor we will consider in determining, from the totality of the circumstances presented, whether the governmental body has established litigation is reasonably anticipated. *See* Open Records Decision No. 638 at 4 (1996).

You state the remaining information is related to an incident in which the county sheriff's office was involved in a high-speed pursuit. You explain the requestor is an attorney for two individuals who allegedly were injured in the course of the pursuit. You state the requestor submitted a notice of claim under the TTCA to the county in conjunction with his request for information. You contend, and have submitted an affidavit from the county risk manager stating, the county reasonably anticipates litigation. You also contend the rest of the submitted information, which pertains to a criminal matter of which the pursuit was part, is related to the anticipated litigation. Based on the notice of claim, your representations, the affidavit, and the totality of the circumstances, we find the county reasonably anticipated litigation on the date of its receipt of this request for information. We also find the rest of the submitted information is related to the anticipated litigation. We therefore conclude section 552.103 of the Government Code is generally applicable to the remaining information.

We note, however, basic factual information about a crime must be released. *See* 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. *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.); Open Records Decision No. 127 (1976). Basic information includes the identification and description of the complainant and a detailed description of the offense. *See* ORD 127 at 3-4. With the exception of basic information, the county may withhold the rest of the submitted information under section 552.103 of the Government Code.²

In reaching this conclusion, we assume the opposing parties in the anticipated litigation have not already seen or had access to any of the information in question. 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 parties have seen or had access to information relating to anticipated litigation, through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103 ends once the related litigation concludes or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

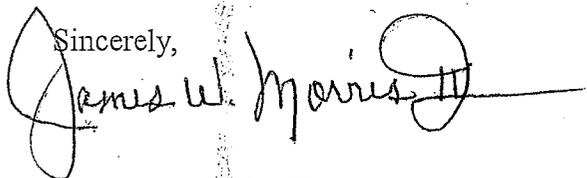
²We note basic information includes an arrested person's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

In summary, the county (1) must release the marked court document pursuant to section 552.022(a)(17) of the Government Code and (2) may withhold the rest of the submitted information, except for basic information, under section 552.103 of the Government Code.³

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 W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 419970

Enc: Submitted information

c: Requestor
(w/o enclosures)

³As we are able to make these determinations, we need not address your other arguments against disclosure, except to note basic information is not excepted from disclosure under section 552.108 of the Government Code. See Gov't Code § 552.108(c).