



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2011

Mr. W. Lee Auvenshine
Assistant County & District Attorney
Ellis County
109 South Jackson
Waxahachie, Texas 75165

OR2011-08522

Dear Mr. Auvenshine:

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# 420657.

The Ellis County and District Attorney's Office (the "county") received a request for (1) basic information, including the complete front-page of the report, related to a specified offense, and (2) the arrest warrant, arrest warrant affidavit, and any arrest report or booking report related to the same offense. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code and privileged under article 39.14 of the Code of Criminal Procedure. We have considered your arguments and reviewed the submitted information.

Initially, we note much of the information you have submitted is not responsive to the request. The requestor seeks only the basic information concerning the offense,¹ including the complete front page of the report, and the arrest warrant, arrest warrant affidavit, and any arrest report or booking report related to the offense. Accordingly, any information outside

¹Basic 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). This information includes, but is not limited to, the details of the arrest, the physical condition of the arrested person, a detailed description of the offense, booking information, and bonding information. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

the scope of this request is not responsive. This ruling does not address the public availability of non-responsive information, and the county need not release information that is not responsive to the request.

You seek to withhold the responsive information pursuant to article 39.14 of the Code of Criminal Procedure. However, article 39.14 governs the discovery of information and the testimony of witnesses in criminal proceedings. Article 39.14 does not expressly make information confidential for purposes of the Act. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality under section 552.101 must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public); *see also* Open Records Decision No. 575 at 2 (1990) (explicitly stating that discovery privileges are not covered by statutory predecessor to section 552.101). We therefore conclude the county may not withhold any of the responsive information under article 39.14 of the Code of Criminal Procedure.

You seek to withhold the responsive information 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.

...

(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 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 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). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state the county is involved in pending criminal litigation against the requestor's client concerning the incident for which she seeks information. Accordingly, we find that litigation was pending on the date the county received the request and the responsive information at issue relates to the pending litigation. Therefore, section 552.103 of the Government Code is generally applicable to the responsive information.

However, the information at issue involves alleged criminal activity. Information normally found on the front page of an offense or incident report is generally considered public. *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). This office has stated basic information about a crime may not be withheld under section 552.103 of the Government Code even if it is related to the litigation. Open Records Decision No. 362 (1983). Thus, we find the basic offense information from the incident and arrest reports may not be withheld on the basis of section 552.103 of the Government Code. Therefore, with the exception of basic information, the county generally may withhold the responsive information under section 552.103 of the Government Code.²

We note, however, 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 obtained from or provided to all other parties in the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 (1982).

In summary, with the exception of basic information, the county may withhold the responsive information under section 552.103 of the Government Code, to the extent the opposing party has not seen or had access to this information. To the extent the opposing party has seen or had access to this information, it must be released.

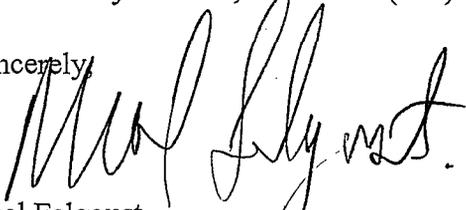
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²As our ruling is dispositive, we do not address your argument under section 552.108 of the Government Code, except to note section 552.103 does not generally except from disclosure the same basic information that must be released under section 552.108(c). See Open Records Decision No. 597 (1991).

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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive, flowing style with a prominent initial "N".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 420657.

Enc. Submitted documents

c: Requestor
(w/o enclosures)