



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 16, 2011

Ms. Dorothy Palumbo  
City Attorney  
City of Highland Village  
1000 Highland Village Road  
Highland Village, Texas 75077

OR2011-11807

Dear Ms. Palumbo:

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# 427057.

The City of Highland Village (the "city") received a request for the personnel file of a named city police officer and any documentation of contact between a named individual and any member of the city's police department (the "department"). You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) 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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that the submitted information includes citations. Because a copy of each citation has been provided to the individual cited, we find that release of the citations will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the city may not withhold the citations we have marked under section 552.108(a)(1). You state, and submit a letter from the Denton County District

Attorney (the “district attorney”) stating, that the remaining information relates to a pending criminal prosecution. The letter from the district attorney explains that the named individual is the defendant in the pending prosecution and the named officer is the victim of the crime being prosecuted. You and the district attorney explain the named officer’s personnel file and the requested documentation of contact between the named individual and department personnel “constitute direct evidence of the criminal case” and are directly related to the pending prosecution. You and the district attorney assert release of the remaining information would interfere with the pending prosecution. Based upon these representations, the district attorney’s letter, and our review, we conclude that release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we conclude that section 552.108(a)(1) of the Government Code is generally applicable to the remaining information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 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 city must release basic information, including a detailed description of the offense at issue, even if this information does not literally appear on the front page of an offense or arrest report. Thus, with the exception of basic information and the citations we have marked, you may withhold the submitted information from disclosure under section 552.108(a)(1).<sup>1</sup>

You also claim the citations are excepted under section 552.103 of the Government Code. Section 552.103 provides in relevant part as follows:

(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.

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<sup>1</sup>As our ruling is dispositive for the information subject to section 552.108(a)(1), we do not address your remaining claim against disclosure for this information, except to note that 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).

(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 purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See id.* § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

We note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information that is related to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. As discussed above, the submitted citations were provided to the individual cited; thus, the citations were seen by the opposing party to the litigation. Therefore, the citations may not be withheld under section 552.103 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license, a motor vehicle title, or registration issued by a Texas agency, or an agency of another state or country. *See* Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 4 (to be codified as amendments to Gov't Code § 552.130(a)(1)-(2)). Upon review, we find the city must withhold the motor vehicle record information we have marked in the marked citations under section 552.130 of the Government Code.

In summary, with the exception of basic information and the citations we have marked, the city may withhold the submitted information from disclosure under section 552.108(a)(1) of the Government Code. The city must withhold the motor vehicle information we have

marked under section 552.130 of the Government Code. The remaining information must be released.<sup>2</sup>

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](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# 427057

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note basic information includes an arrestee'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. See Gov't Code § 552.147(b).