



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 30, 2012

Mr. R. Brooks Moore  
Managing Counsel, Governance  
The Texas A&M University System  
Office of General Counsel  
301 Tarrow Street, Sixth Floor  
College Station, Texas 77840-7896

OR2012-01480

Dear Mr. Moore:

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# 447828 (TAMU 11-768).

Texas A&M University (the "university") received a request for a specified incident report. You claim some of the requested information is excepted from disclosure under sections 552.103, 552.108, and 552.130 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). You state the Brazos County Attorney seeks to withhold the information you have marked because it relates to a pending criminal prosecution and release of the information would interfere with that prosecution. *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). Thus, we find section 552.108(a)(1) generally applicable. We note, however, that the information at

issue includes a DIC-24 statutory warning and a DIC-25 notice of suspension. The university provided copies of these forms to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Accordingly, with the exception of the DIC-24 and DIC-25 forms, the university may withhold the information you have marked under section 552.108.

You also claim the DIC-24 and DIC-25 forms are excepted 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). The 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).

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 related to litigation through the discovery process. *See* Open Records Decision No. 551 at 4-5. 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. The submitted DIC-24 and DIC-25 forms were provided to the arrestee; thus, the DIC-24 and DIC-25 forms were inevitably seen by the opposing party to the litigation. Accordingly, the university may not withhold this information under section 552.103 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1). Accordingly, except as we have marked for release, the university must withhold the information you have marked, as well as the additional information we have marked in the DIC-24 and DIC-25 forms, under section 552.130 of the Government Code.

In summary, with the exception of the DIC-24 and DIC-25 forms, the university may withhold the information you have marked under section 552.108(a)(1) of the Government Code. Except as we have marked for release, the university must withhold the information you have marked, as well as the additional information we have marked in the DIC-24 and DIC-25 forms, under section 552.130 of the Government Code. The remaining information must be released.<sup>1</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,



Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/ag

---

<sup>1</sup>We note the information being released includes a 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. Gov't Code § 552.147(b). We also note the requestor has a right of access to the driver's license number being released. Section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. See Gov't Code § 552.130(c). Therefore, if the university receives another request for these same records from a different requestor, section 552.130(c) authorizes the university to redact this driver's license number without the necessity of requesting another decision.

Ref: ID# 447828

Enc. Submitted documents

c: Requestor  
(w/o enclosures)