



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2012

Mr. Michael Bloch
Assistant District Attorney
Cameron County District Attorney
P.O. Box 2299
Brownsville, Texas 78522-2299

OR2012-08155

Dear Mr. Bloch:

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# 454868.

The Cameron County Sheriff's Office (the "sheriff's office") received a request for the police report pertaining to a specified incident involving the requestor's client. You state you have released some information to the requestor. You claim the submitted 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.

Section 552.103 of the Government Code 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). The sheriff's office has the burden of providing relevant facts and documents to show that 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 sheriff's office 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 sheriff's office must meet both prongs of this test for information to be excepted under section 552.103(a).

You state the submitted information was investigated by the sheriff's office and relates to a criminal case pending with the Cameron County District Attorney's Office (the "district attorney's office"). We note the sheriff's office is not a party to the pending case and, thus, does not have a litigation interest in the case for purposes of section 552.103. See Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (statutory predecessor to Gov't Code § 552.103 only applies when governmental body is party to litigation). Under these circumstances, we require an affirmative representation from the governmental body with the litigation interest that it wants the information at issue withheld from disclosure under section 552.103. You request the submitted information be withheld because prosecution is pending. Thus, we understand you to assert, as the assistant district attorney for the district attorney's office, the release of the information at issue would interfere with the district attorney's office's prosecution of the pending case. Based on your representations, we conclude the sheriff's office may generally withhold the information at issue on behalf of the district attorney's office under section 552.103.

However, the information at issue involves alleged criminal activity. As you acknowledge, 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. per curiam*, 536 S.W.2d 559 (Tex. 1976); 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 report may not be withheld on the basis of section 552.103 of the Government Code. Therefore, with the exception of basic information, the sheriff's office may withhold the submitted information under section 552.103(a) of the Government Code.

We note, however, once information has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that

information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).¹

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,

A handwritten signature in cursive script, appearing to read "Michelle R. Garza", followed by a long horizontal line extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/em

Ref: ID# 454868

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As we are able to resolve this issue under section 552.103, we need not address your remaining argument against disclosure, except to note basic information may not be withheld from public disclosure under section 552.108. Open Records Decision No. 597 (1991).