



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 25, 2012

Ms. M. Ann Montgomery-Moran
Assistant Ellis County & District Attorney
Ellis County & District Attorney's Office
Ellis County Courts Building
109 South Jackson
Waxahachie, Texas 75165

OR2012-11543

Dear Ms. Montgomery-Moran:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 460321.

The Ellis County and District Attorney's Office (the "D.A.'s Office") received a request for 1) e-mails regarding criminal case number 36560CR and civil forfeiture case number 82494 and 2) a specified compact disc. The D.A.'s Office seeks to withhold the information from disclosure under sections 552.103, 552.108, and 552.137 of the Government Code. We have considered the exceptions the D.A.'s Office asserts and have reviewed the submitted information.

Section 552.108(a)(1) 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 must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The D.A.'s Office states criminal case number 36560CR is pending prosecution. Based on this representation and our review, we conclude release of the information the D.A.'s Office marked as related to the criminal case would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177

(Tex. Civ. App.—Houston [14th Dist.] 1975) (specifying law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the D.A.'s Office may withhold the marked information pursuant to section 552.108(a)(1) of the Government Code.

Next, we consider the section 552.103 assertion for the information related to the civil forfeiture case. Section 552.103, the litigation exception, 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.

...

(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 D.A.'s Office has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in this particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the request for information is received, 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 D.A.'s Office must meet both prongs of this test for information to be excepted under section 552.103(a). To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated").

The D.A.'s Office explains although the civil action resulted in a final judgment on April 20, 2012, the case is pending appeal. However, the requestor did not take a concrete step toward litigation until he actually filed his notice of appeal on May 18, 2012, subsequent to the D.A.'s Office's receipt of the open records request on May 7, 2012. Accordingly, we find the D.A.'s Office has not demonstrated litigation was pending or reasonably anticipated at the time it received the request. Consequently, the D.A.'s Office may not withhold information relating to the civil forfeiture case under section 552.103.

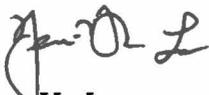
Lastly, the D.A.'s Office marked two e-mail addresses in the set of documents relating to the civil forfeiture case as excepted from disclosure under section 552.137 of the Government Code. Section 552.137 makes confidential an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body. Gov't Code § 552.137. We note, however, section 552.137 does not apply to the general e-mail address of a business. The two e-mail addresses the D.A.'s Office marked are general e-mail addresses of a business, and thus, are not confidential under section 552.137.

In summary, the D.A.'s Office may withhold the information relating to the criminal case under section 552.108(a)(1) of the Government Code. The D.A.'s Office must release the remainder.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/bs

Ref: ID# 460321

Enc: Submitted documents

c: Requestor
(w/o enclosures)