



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2012

Ms. Jennifer DeCurtis
Counsel for the City of Murphy
Messer, Campbell & Brady, L.L.P.
6351 Preston Road, Suite 350
Frisco, Texas 75034

OR2012-16217

Dear Ms. Curtis:

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# 467510.

The City of Murphy (the "city"), which you represent, received three requests for (1) information pertaining to a specified property (2) any communications, including e-mails, letters, audio, or video, concerning the property or four named residents during a specified period of time; and (3) the police report(s) pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, 552.130, 552.147, and 552.152 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant requests because they were created after the requests were received

¹Although you also raise sections 552.119 and 552.137, you have not submitted arguments in support of those exceptions; therefore, we assume you have withdrawn them. See Gov't Code §§ 552.301, .302.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

by the city. This ruling does not address the public availability of the information that is not responsive to the request, and the city is not required to release this information in response to this request.

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, and provide correspondence from the district attorney’s office, the city’s police department, and a municipal prosecutor stating, the responsive information relates to a pending criminal investigation and prosecution and release of the information could interfere with that investigation and 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). Therefore, we find section 552.108(a)(1) generally applies to the responsive information. However, we note the responsive information includes a citation, a copy of which has been provided to the requestor’s father, the individual who was cited. You have not explained how release of the citation, which has already been seen by the cited individual, would interfere with the detection, investigation, or prosecution of crime. Therefore, the citation, which we have marked, may not be withheld under section 552.108(a)(1).

However, section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*, which includes a sufficient portion of the narrative to encompass a detailed description of the offense, an arrestee’s social security number, and the identities of the arresting and investigating officers. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See* Gov’t Code § 552.130. Thus, with the exception of basic information from the specified police reports and the marked citation, the city may withhold the responsive information under section 552.108(a)(1) of the Government Code.³

Section 552.103 of the Government Code provides in relevant part as follows:

³As our ruling is dispositive, we do not address your other arguments against disclosure, except to note that, generally, basic information held to be public in *Houston Chronicle* is not excepted from public disclosure under section 552.103 of the Government Code. *See* Open Records Decision No. 597 (1991).

(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 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).

You raise section 552.103 of the Government Code for the marked citation. You have provided correspondence from the municipal prosecutor, who states the information at issue is related to an ongoing prosecution. Based on this representation and our review, we find litigation was pending at the time of the request and the information at issue is related to the pending litigation. Therefore, we find section 552.103 is generally applicable to the information at issue.

However, 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 relating to litigation through discovery procedures. *See* ORD 551 at 4–5. If the opposing party has seen or had access to information relating to the pending litigation, through discovery or otherwise, then there is no interest in withholding that information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). As previously noted, the citation was provided to the requestor's father, who is the opposing party to the pending litigation.

Thus, the opposing party in the litigation has already seen that information. Therefore, we conclude the citation may not be withheld under section 552.103 of the Government Code.

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. Gov't Code § 552.107(1). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *See* TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You also claim the marked citation is protected under the attorney-client privilege of section 552.107 of the Government Code. However, because the marked citation was provided to the requestor's father, it has been communicated to a non-privileged party. Accordingly, we find the city has failed to establish the applicability of the attorney-client privilege to the information at issue, and the city may not withhold the citation under section 552.107(1) 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, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). Thus, the city must

withhold the driver's license number we have marked in the citation under section 552.130 of the Government Code.

You raise section 552.147 of the Government Code for an arrestee's social security number in the basic information. Section 552.147 of the Government Code excepts from disclosure the social security number of a living person.⁴ *Id.* § 552.147. The city may withhold the arrestee's social security number under section 552.147 of the Government Code.

You raise section 552.152 of the Government Code for the names of officers in the basic information. Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. Upon review, we find you have not demonstrated release of the information at issue would subject an officer to a substantial risk of physical harm. Accordingly, the city may not withhold the any of the basic information under section 552.152 of the Government Code.

In summary, with the exception of the basic information from the specified police reports and the marked citation, the city may withhold the responsive information under section 552.108(a)(1) of the Government Code. In releasing the marked citation, the city must withhold the marked driver's license number under section 552.130 of the Government Code. In releasing the basic information, the city may withhold the arrestee's social security number under section 552.147 of the Government Code.

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

⁴Section 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).

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 "Michelle R. Garza". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 467510

Enc. Submitted documents

c: Requestor
(w/o enclosures)