



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2012

Ms. Evelyn W. Njuguna
HPD Staff Attorney
City of Houston
1200 Travis
Houston, Texas 77002-6000

OR2012-17958

Dear Ms. Njuguna:

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# 472101 (ORU Nos. 12-5334, 12-5345, 12-5522, 12-5523, and 12-5524).

The Houston Police Department (the "department") received five requests from three different requestors for (1) information pertaining to the death of a named individual; (2) information pertaining to deaths, suicides, or attempted suicides of inmates; (3) the names of all females jailed during a specified time period and with the named individual; (4) the names of all police officers and jailers assigned to a specified area during a specified time period; and (5) a copy of the department's general orders regarding the procedures in handling medical emergencies, prisoner requests for medical treatment, and evaluating and separating unconscious or intoxicated subjects. 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 representative sample of information.¹

Initially, we note portions of the requests require the department to answer questions. The Act does not require a governmental body to answer general questions, perform legal

¹We assume the "representative sample" of information 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.

research, or create new information in response to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8, 561 at 8-9 (1990), 555 at 1-2, 534 at 2-3 (1989). In this instance, we assume the department has made a good faith effort to locate any information responsive to these portions of the requests. Accordingly, we will address your claimed exceptions for the submitted information.

Next, you inform us that general orders 500-02, 500-03, and 500-12 were the subject of previous rulings issued by this office in Open Records Letter Nos. 2006-14725 (2006) and 2008-12754 (2008). In those rulings, we determined the department may withhold portions of the information at issue under section 552.108(b)(1) of the Government Code but must release the remaining information at issue. As we have no indication the law, facts, and circumstances upon which the previous rulings were based have changed, the department may continue to rely on these rulings as previous determinations and withhold or release the information at issue in accordance with these prior rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note some of the submitted information in Exhibit 2A is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for required disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]" unless the information is made confidential under the Act or "other law" or is excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). The information we have indicated consists of completed investigations that are subject to section 552.022(a)(1). You do not claim section 552.108 of the Government Code for this information. Although you assert this information is excepted from disclosure under section 552.103 of the Government Code, that exception is discretionary and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 439, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the department may not withhold these investigations under section 552.103. We note, however, that some of the information at issue may be subject to sections 552.1175 and 552.130 of the Government Code.² Because sections 552.1175 and 552.130 of the Government Code make information

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

confidential under the Act, we will address these sections' applicability to the completed investigations.

Section 552.1175 of the Government Code applies to information pertaining to peace officers that the department does not hold in an employment context. Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). Upon review, we determine the department must withhold the information we have marked under section 552.1175 if the individual to whom the information pertains is a licensed peace officer and elects to restrict access to his information in accordance with section 552.1175(b). However, if the individual is not a licensed peace officer or no election is made, the department may not withhold the individual's information under section 552.1175 of the Government Code.³

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license issued by a Texas agency, or an agency of another state or country, is excepted from public release. *Id.* § 552.130(a)(1). Upon review, we find the department must withhold the driver's license numbers we have marked under section 552.130 of the Government Code.

³We note, regardless of the applicability of section 552.1175, 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).

Lastly, we address your argument under section 552.103 of the Government Code for the remaining information not subject to section 552.022 of the Government Code. Section 552.103 provides, in 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.

Id. § 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).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* In Open Records Decision No. 638 (1996), this office stated that a governmental body has met its burden of showing that litigation is reasonably anticipated when it received a notice of claim letter and the governmental body represents that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act ("TTCA"), Civ. Prac. & Rem. Code, ch. 101, or an applicable municipal ordinance.

You inform us, and submit documentation showing, that prior to the department's receipt of the present requests for information, the department received a notice of claim letter that complies with the requirements of the TTCA. Based on your representations and our review, we find the department reasonably anticipated litigation at the time of the requests. Further, you state, and we agree, the remaining information not subject to section 552.022 of the Government Code is related to the incident that forms the basis of the anticipated litigation.

We note, however, basic factual information about a crime must be released. *See* Open Records Decision No. 362 (1983). Information normally found on the front page of an offense report is generally considered public and must be released. *See 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); 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. ORD 362. Thus, we find the basic offense information from the remaining information not subject to section 552.022 may not be withheld on the basis of section 552.103 of the Government Code. Therefore, with the exception of basic information, the department may withhold the remaining information not subject to section 552.022 under section 552.103 of the Government Code.⁴

We note, however, once the information at issue has been obtained by all parties to the anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Further, the applicability of section 552.103(a) ends once the litigation has concluded or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the department may continue to rely on Open Records Letter Nos. 2006-14725 and 2008-12754 as previous determinations and withhold or release general orders 500-02, 500-03, and 500-12 in accordance with these prior rulings. The department must withhold the information we have marked under section 552.1175 of the Government Code if the individual to whom the information pertains is a licensed peace officer and elects to restrict access to his information in accordance with section 552.1175(b). The department must withhold the driver's license numbers we have marked under section 552.130 of the Government Code. The department must release the remaining information in the completed investigations we have indicated pursuant to section 552.022(a)(1) of the Government Code.⁵ With the exception of basic information, which the department must release, the department may withhold the remaining information not subject to section 552.022 under section 552.103 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.

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information except to note that 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).

⁵We note the information being released contains social security numbers. As previously noted, 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).

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 472101

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)