



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 12, 2013

Ms. Erin A. Higginbotham  
Counsel for City of Garden Ridge  
Denton, Navarro, Rocha & Bernal, P.C.  
2500 West William Cannon Drive, Suite 609  
Austin, Texas 78745

OR2013-05935

Dear Ms. Higginbotham:

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# 483862.

The City of Garden Ridge (the "city"), which you represent, received a request for complete and signed copies of all of the requestor's evaluations from 2005 through 2012, and any and all documentation in the requestor's personnel file, internal investigations file, and field personnel file from 2004 through 2013. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless it is excepted by section 552.108 of the Government Code or "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(1). We note the submitted information contains completed reports and evaluations that are subject to section 552.022(a)(1). As such, these reports and evaluations must be released unless they are either excepted under section 552.108 of the Government Code or confidential under the Act or other law. We note you raise section 552.108 for the completed reports. Although you also raise section 552.103 of the Government Code for the completed evaluations, section 552.103 is a discretionary exception that protects a governmental body's interests and

does not make information confidential under the Act. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, none of the information subject to section 552.022 may be withheld under section 552.103 of the Government Code. As you raise no other exceptions for the evaluations, you must release this information, which we have marked, pursuant to section 552.022(a)(1) of the Government Code. However, we will address your argument under section 552.108 for the reports, as well as your argument under section 552.130, as these sections make information confidential under the Act. We will also address your arguments against disclosure for the remaining information not subject to section 552.022.

You seek to withhold the reports under section 552.108 of the Government Code. Section 552.108 provides, in pertinent part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

*Id.* § 552.108(a)(1)-(2), (b)(1)-(2). Subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1)

encompasses internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. In contrast, subsections 552.108(a)(2) and 552.108(b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the submitted reports that you have marked relate to cases that are pending and release would interfere with the detection, investigation, and prosecution of the crime alleged in the documents at issue. Based upon this representation and our review, we conclude that release of most of the information at issue would interfere with the detection, investigation, or prosecution of crime. *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). Accordingly, we conclude section 552.108(a)(1) of the Government Code is generally applicable to the reports that you have marked. However, we note incident report number 11-00545 relates to an incident that occurred in 2011 in which the requestor's patrol car was damaged, and the report lists the status as closed. Accordingly, we find you have failed to demonstrate the applicability of section 552.108(a)(1) to incident report number 11-00545, which we have marked, and the city may not withhold this report on that basis.

We note 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic information and incident report number 11-00545, you may withhold the remaining reports that you have marked under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Upon review, we find the city must withhold the motor vehicle record information, which we have marked, under section 552.130 of the Government Code.

Next, we will address your arguments against disclosure for the remaining information not subject to section 552.022 of the Government Code. 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). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate 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 the pending or anticipated litigation. *See 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.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See Open Records Decision No. 551 at 4 (1990).*

To demonstrate that litigation is reasonably anticipated, the 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)*. Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.<sup>1</sup> *Open Records Decision No. 555 (1990)*; *see also Open Records Decision No. 518 at 5 (1989)* (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See Open*

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<sup>1</sup>In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see Open Records Decision No. 336 (1982)*; hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see Open Records Decision No. 346 (1982)*; and threatened to sue on several occasions and hired an attorney, *see Open Records Decision No. 288 (1981)*.

Records Decision No. 331 (1982). This office has concluded that litigation was reasonably anticipated when the potential opposing party filed a complaint with the Equal Employment Opportunity Commission (the "EEOC"). *See* Open Records Decision No. 336 (1982).

You state, and submit supporting documentation demonstrating, the requestor filed an EEOC Notice of Charge of Discrimination against the city before the date the city received the present request for information. Based on your representations and our review, we determine the city reasonably anticipated litigation on the date the city received the request. Furthermore, we find the submitted information relates to the anticipated litigation. Accordingly, we conclude the city may withhold the remaining information under section 552.103 of the Government Code.

We note once the information has been obtained by all parties to the anticipated litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation is concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

In summary, the city must release the completed evaluations that we have marked pursuant to section 552.022(a)(1) of the Government Code. The city may withhold the completed reports under section 552.108(a)(1) of the Government Code, except for basic information and incident report number 11-00545. In releasing incident report number 11-00545, the city must withhold the information we have marked under section 552.130 of the Government Code.<sup>2</sup> The city may withhold the remaining information 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.

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,

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<sup>2</sup>We note the information to be released contains a social security number to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023. 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. *Id.* § 552.147(b). Accordingly, if the city receives another request for information from an individual other than the requestor, the city is authorized to withhold the requestor's social security number under section 552.147(b) without the necessity of requesting a decision from this office.

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 black ink that reads "Britni Fabian". The signature is written in a cursive, flowing style.

Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/dls

Ref: ID# 483862

Enc. Submitted documents

c: Requestor  
(w/o enclosures)