



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 18, 2013

Mr. Jason L. Mathis
For Town of Addison
Cowles & Thompson
901 Main Street, Suite 3900
Dallas, Texas 75202-3793

OR2013-06371

Dear Mr. Mathis:

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# 484458.

The Town of Addison (the "town"), which you represent, received a request for the personnel file of a named former police officer. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requestor has excluded social security numbers and personal addresses and phone numbers from the scope of his request. Accordingly, these types of information are not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the town need not release non-responsive information in response to this request.

Next, we note the submitted information contains completed evaluations subject to section 552.022 of the Government Code. Section 552.022 provides "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" is expressly public, 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). Accordingly, the town must release the completed evaluations unless they are confidential under other law or excepted from disclosure under section 552.108. Although you claim this information is excepted from disclosure under section 552.103 of the Government Code, this section is a

discretionary exception that a governmental body may waive. *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 No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 does not make information confidential for purposes of section 552.022(a)(1). Thus, the town may not withhold the completed evaluations under section 552.103 of the Government Code. As you raise no other exceptions to disclosure of the responsive information subject to section 552.022, the town must release it to the requestor. However, we will address your argument under section 552.103 for the responsive information not subject to section 552.022.

Section 552.103 provides, in relevant part, the following:

(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 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 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 state the submitted information relates to a prosecution pending with the Dallas County District Attorney's Office, in which the named former police officer is set to testify. We understand the prosecution was pending when the town received the present request. We note, however, the town is not a party to the pending prosecution and, therefore, does not have a litigation interest in the matter for purposes of section 552.103. *See* Gov't Code

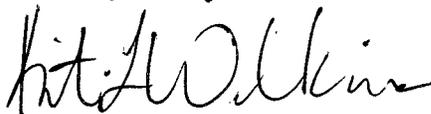
§ 552.103(a); Open Records Decision No. 575 at 2 (1990) (stating predecessor to section 552.103 only applies when governmental body is party to litigation). In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. However, you have not provided this office with an affirmative representation from any governmental body with a litigation interest that the governmental body wishes the information at issue to be withheld pursuant to section 552.103 of the Government Code. Accordingly, the town may not withhold any of the information at issue under section 552.103 of the Government Code.

We note portions of the submitted information are subject to section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(2). Therefore, the town must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.

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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ac

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 484458

Enc. Submitted documents

c: Requestor
(w/o enclosures)