



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2013

Ms. Janis K. Hampton
Bryan City Attorney
P.O. Box 1000
Bryan, Texas 77805-1000

OR2013-08078

Dear Ms. Hampton:

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# 491787.

The Bryan Police Department (the "department") received two requests for information related to a specified incident. 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 information.

Section 552.108 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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the information at issue relates to a pending prosecution. Based on this representation, we find release of the submitted information 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).

We note, however, the information at issue includes a DIC-24S statutory warning. The arrestee was provided a copy of this form. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1). Accordingly, the DIC-24S form may not be withheld under section 552.108.

Additionally, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the DIC-24S form and basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

You also raise section 552.103 of the Government Code, which provides in relevant 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.

Id. § 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 (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, orig. proceeding); *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 inform us the information at issue relates to a pending criminal prosecution. We note, however, basic information held to be public in *Houston Chronicle* is generally not excepted

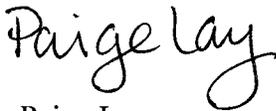
from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991). We further note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information that is related to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. The submitted DIC-24S form was provided to the individual who was cited; thus, the DIC-24S form were inevitably seen by the opposing party to the litigation. Therefore, the department may not withhold the DIC-24S form or the basic information under section 552.103.

In summary, with the exception of basic information and the DIC-24S form, which must be released, the department may withhold the remaining information under section 552.108(a)(1) 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 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 491787

Enc. Submitted documents

cc: Requestor
(w/o enclosures)