



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 20, 2013

Ms. Trisha Dang  
Assistant City Attorney  
City of Missouri City  
1522 Texas Parkway  
Missouri City, Texas 77489

OR2013-08382

Dear Ms. Dang:

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# 487753.

The City of Missouri City (the "city") received a request for all information regarding a specific citation, as well as a named police officer's oath of office, the officer's squad car camera video footage pertaining to the citation, and the statute under which the citation was issued. You claim some of the submitted information is subject to section 552.027 of the Government Code. In addition, you claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

You contend the city is not required to provide the requested statutes because they are commercially available. Section 552.027 of the Government Code provides as follows:

(a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body

is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

Gov't Code § 552.027. Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. You state the information at issue is commercially available. In this instance, however, the requestor has not requested a particular commercially available publication, but rather the requestor simply seeks the law under which he was charged. We note this information cannot be obtained by a member of the public if the member of the public is not aware of which law or laws apply to his citation. The fact that commercially available research materials happen to be responsive to the request does not, in our view, bring such materials within the ambit of section 552.027. Accordingly, due to the nature of the request, we determine that the information at issue is not subject to section 552.027, and must be released unless it falls within an exception to disclosure. *See id.* §§ 552.006, .021, .301, .302.

Section 552.108(a) 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: (1) 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(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note the information at issue includes a citation. Because a copy of the citation is provided to the person who is the subject of the citation, we find release of the citation will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the city may not withhold the citation under section 552.108 of the Government Code.

You state the remaining information pertains to an active and pending criminal prosecution being undertaken by the city attorney's office. Based upon your representation and our review, we conclude the release of this 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). Accordingly, with the exception of the citation, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.

You also claim the citation is excepted under section 552.103 of the Government Code, which provides:

(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 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).

You state the information at issue relates to a criminal case that is pending in municipal court. 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 related to litigation through the discovery process. *See* Open Records Decision No. 551 at 4-5. Thus, any information obtained from or provided to all other parties in the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. In this instance, we note the requestor has seen the citation issued to him. Thus, the citation has been provided to the opposing party to the pending litigation, and therefore may not be withheld under section 552.103 of the Government Code.

In summary, with the exception of the citation, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. The citation must be released.<sup>1</sup>

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, 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,



Eamon D. Briggs  
Assistant Attorney General  
Open Records Division

EDB/som

Ref: ID# 487753

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>We note the citation being released contains the requestor's driver's license information, which is excepted from public disclosure under section 552.130 of the Government Code. Because this section protects privacy, the requestor has a right of access to his own driver's license information under section 552.023 of the Government Code. Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). The city is now authorized to redact driver's license information under section 552.130(c) without the necessity of requesting a decision under the Act. *See* Gov't Code § 552.130(c)-(e). Thus, should the city receive another request for the same information from a different requestor, the city is authorized to withhold the requestor's driver's license information without requesting another ruling.