



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2013

Mr. R. Brooks Moore
Managing Counsel, Governance
Office of General Counsel
The Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2013-13225

Dear Mr. Moore:

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# 499529 (TAMU 13-370).

Texas A&M University (the “university”) received a request for a police report related to a specified case number. You claim some of the requested information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

Section 552.108(a)(1) 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information you have marked is related to a pending criminal prosecution. You inform us the Brazos County Attorney’s Office objects to disclosure of the marked information because its release would interfere with the prosecution. Based on your representations, we conclude section 552.108(a)(1) is generally applicable to the marked information. *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 marked information includes criminal trespass warnings. Because copies of those documents were provided to the persons who are the subject of the warnings, we find release of the criminal trespass warnings will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). We therefore conclude the criminal trespass warnings may not be withheld under section 552.108. Except for the criminal trespass warnings, the university may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

You also seek to withhold the criminal trespass warnings under section 552.103 of the Government Code, the "litigation exception," which 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). 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 discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). If the opposing party has seen or had access to information related to pending or anticipated litigation, through discovery or otherwise, then there is no interest in withholding that information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). In this instance, the criminal trespass warnings are related to a pending prosecution. You indicate the recipients of the warnings are the defendants in the prosecution. Thus, the opposing parties in the litigation have already seen the warnings. We therefore conclude the university may not withhold the criminal trespass warnings under section 552.103 of the Government Code.

Finally, section 552.130 of the Government Code provides that information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a)(1)-(2). The university must withhold the information you have

marked, as well as the information we have marked in the criminal trespass warnings, under section 552.130.¹

In summary, the university (1) may withhold the information you have marked under section 552.108(a)(1) of the Government Code, except for the criminal trespass warnings, which may not be withheld on that basis; and (2) the university must withhold the information you have marked, as well as the information we have marked in the criminal trespass warnings, under section 552.130 of the Government Code. The remaining information in the warnings must be released. The university also must release the rest of the submitted information unless it has already done so.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bhf

Ref: ID# 499529

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. See Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See Gov't Code § 552.130(d), (e).