



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2014

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

OR2014-04961

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# 517740 (TAMU 14-004).

The Texas A&M University Police Department (the "department") received a request for all documents relating to the arrest of the requestor's client. You claim portions of the submitted information are 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(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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal prosecution by the Brazos County Attorney's Office (the "county attorney's office"). You inform us, and provide documentation confirming, the county attorney's office objects to disclosure of the information you have marked because its release would interfere with the detection, investigation, or prosecution of crime. However, a portion of the information you have marked is contained within a DIC-25 Notice of Suspension. We note, the department provided a copy of this form to the arrestee. You have not explained how releasing this information, which has already been released to the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1).

Accordingly, the information you marked in the DIC-25 form may not be withheld under section 552.108. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). However, the department may withhold the remaining information you marked under section 552.108(a)(1) of the Government Code.¹

You also raise section 552.103 of the Government Code for the information you marked in the DIC-25 form, 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.

Gov't Code § 552.103(a), (c). 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 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, 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 state, and provide documentation from the county attorney's office representing, the information at issue relates to a criminal case pending prosecution by the county attorney's office. We note, however, 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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

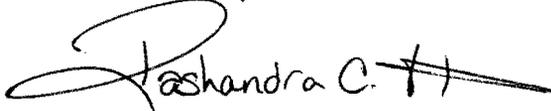
from disclosure under section 552.103(a), and it must be disclosed. The information you marked in the DIC-25 form was provided to the arrestee; thus, this information was inevitably seen by the opposing party to the litigation. Therefore, the department may not withhold any of the remaining information at issue under section 552.103 of the Government Code.

In summary, with the exception of the information you marked in the DIC-25 form, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code. The remaining information must be released.²

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,



Rashandra C. Hayes
Assistant Attorney General
Open Records Division

RCH/dls

²We note the information being released includes the requestor's client's driver's license information, to which the requestor has a right of access pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). 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* 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). Thus, if the department receives another request for this information from a person who does not have such a right of access, section 552.130(c) authorizes the department to redact the requestor's client's driver's license information.

Ref: ID# 517740

Enc. Submitted documents

c: Requestor
(w/o enclosures)