



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2014

Ms. Cara Leahy White
Counsel for the Town of Flower Mound
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2014-14721

Dear Ms. White:

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# 536218.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a specified address before March 12, 2014, as well as specified personnel information pertaining to department heads. The town claims the requested information is excepted from disclosure under sections 552.102, 552.103, and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the town did not submit the requested personnel information pertaining to department heads. We assume, to the extent any additional responsive information existed when the town received the request for information, the town has released it to the requestor. If not, then the town must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

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 the release of the information at issue 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, 710 (Tex. 1977). We note the submitted information includes citations ES7090 and PCE-12-4487. Because the individual who was cited received copies of the citations, we find release of the citations will not interfere with the detection, investigation, or prosecution of crime. Therefore, the town may

not withhold the citations under section 552.108(a)(1). The town states the remaining information relates to a pending criminal prosecution in the town's Municipal Court. Based on this representation, we conclude the release of the remaining 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, 186-87 (Tex. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of citations ES7090 and PCE-12-4487 and basic information, the town may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

You also claim the citations ES7090 and PCE-12-4487 are excepted under section 552.103 of the Government Code, which provides in part as follows:

(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, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984,

¹As our ruling is dispositive, we do not address the town's other arguments to withhold the submitted information, except to note basic information may not be withheld from public disclosure under section 552.103. *See* Open Records Decision No. 597 at 2-3 (1991).

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 from disclosure under section 552.103(a).

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* ORD 551 at 4-5. 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). As discussed above, you state the citations are related to a pending prosecution, and the recipient of the citations is the defendant in the prosecution. Thus, as the opposing party in the litigation has already seen the citations at issue, we conclude the town may not withhold them under section 552.103 of the Government Code.

To conclude, the town must release citations ES7090 and PCE-12-4487 and the basic information in the remaining documents.² The town 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.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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

²Because the requestor has a special right of access to some of the information being released, the town must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 536218

Enc. Submitted documents

c: Requestor
(w/o enclosures)