



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 29, 2016

Ms. Aimee Alcorn
Assistant City Attorney
Legal Department
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2016-04792

Dear Ms. Alcorn:

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# 600228.

The Corpus Christi Police Department (the "department") and the City of Corpus Christi (collectively, the "city") each received a request from the same requestor for certain information pertaining to a specified incident.¹ You state you will release some information. You also state you will redact criminal history record information generated by the Federal Bureau of Investigation (the "FBI") pursuant to the previous determination issued in Open Records Letter No. 2011-17207 (2011).² You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.130, and 552.147 of the Government

¹We note, and you acknowledge, the city did not comply with section 552.301 of the Government Code in requesting this decision with respect to the information that is only responsive to the request received by the department. *See* Gov't Code § 552.301(b). Nonetheless, sections 552.101 and 552.130 of the Government Code are mandatory exceptions that constitute compelling reasons to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .301, .302, .352. Accordingly, we will consider your arguments under sections 552.101 and 552.130 for the information that is only responsive to request received by the department.

² Open Records Letter No. 2011-17207 authorizes the department to withhold FBI numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code without the necessity of requesting an attorney general's decision.

Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the city seeks to withhold the dates of birth of public citizens. In Open Records Letter No. 2016-00831 (2016), this office issued a previous determination to the department authorizing it to withhold dates of birth of living individuals under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Therefore, the city must withhold the dates of birth you have marked and we have marked in accordance with the previous determination issued in Open Records Letter No. 2016-00831.

Section 552.103 of the Government Code 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). A 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 (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).

To establish that litigation is reasonably anticipated, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *See* Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See id.* In Open Records Decision No. 638 (1996), this office stated a governmental body has met its burden of showing litigation is reasonably anticipated by representing it received a notice-of-claim letter that is in compliance with the Texas Tort Claims Act ("TTCA"), chapter 101 of the

Civil Practices and Remedies Code or an applicable municipal ordinance. If that representation is not made, the receipt of the claim letter is a factor we will consider in determining, from the totality of the circumstances presented, whether the governmental body has established litigation is reasonably anticipated. *See* ORD 638 at 4.

You contend the information you have marked pertains to reasonably anticipated litigation. To support your argument, you state, and submit supporting documentation showing, prior to the city's receipt of the request at issue, the city received a notice of claim from the requestor's client. The letter alleges damages and injuries as a result of the incident at issue. You do not affirmatively represent to this office the claim letter is in compliance with the TTCA or an applicable ordinance. Accordingly, we will only consider the claim as a factor in determining whether the city reasonably anticipated litigation over the incident in question. After reviewing the submitted arguments and documents, and based on the totality of the circumstances, we conclude the city has established it reasonably anticipated litigation when it received the request for information. You further state, and we agree, the information at issue is related to the anticipated litigation. Upon review, we find the information you marked is related to the anticipated litigation for purposes of section 552.103(a).

We note, however, the opposing party has seen or had access to some of the information at issue. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. Thus, once the opposing party has seen or had access to information relating to the anticipated litigation through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Upon review, we find the information we have marked has been seen by the opposing party and may not be withheld under section 552.103. Therefore, with the exception of the information we have marked for release, the city may withhold the information you have marked under section 552.103 of the Government Code. We note the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). We note some of the information you have marked is not information that is subject to 552.130. Thus, the city may not withhold this information, which we have marked for release, on that basis. Upon review, we find, except for the information we have marked for release, the city must withhold the motor vehicle record information you have marked, and the additional information we have marked for withholding, under section 552.130 of the Government Code.

In summary, the city must withhold the dates of birth you have marked and we have marked under section 552.101 of the Government Code in conjunction with common-law privacy

in accordance with the previous determination issued in Open Records Letter No. 2016-00831. With the exception of the information we have marked for release, the city may withhold the information you have marked under section 552.103 of the Government Code. With the exception of the information we have marked for release, the city must withhold the motor vehicle record information you have marked, and the additional information we have marked for withholding, under section 552.130 of the Government Code. The city must release the remaining information.³

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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MT/bhf

Ref: ID# 600228

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the remaining information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b). We also note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See id.* § 552.023(a). If the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.