



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 25, 2016

Mr. Frank Leal
Lieutenant
City of Poteet Police Department
P.O. Box 378
Poteet, Texas 78065

OR2016-12017

Dear Mr. Leal:

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# 610088.

The Poteet Police Department (the "department") received two requests from two requestors for a specified police report. You claim the submitted information is 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.

We note the department did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). You inform us the department received the present request for information on February 16, 2016. The department does not inform us it was closed for business on any of the days at issue. Accordingly, the department's ten-business-day deadline under subsection 552.301(b) was March 1, 2016. However, you did not request a ruling from this office until March 4, 2016. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail).

Consequently, we find the department failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. The department raises sections 552.103 and 552.108 of the Government Code. However, sections 552.103 and 552.108 are discretionary exceptions to disclosure and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Thus, because the department has failed to comply with the procedural requirements of the Act, the department has waived its claims under sections 552.103 and 552.108. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Nevertheless, the need of a governmental body, other than the one that failed to comply with section 552.301, to withhold information under sections 552.103 and 552.108 of the Government Code can provide compelling reasons to withhold information from disclosure under section 552.302. *See* Open Records Decision Nos. 586 (1991), 469 (1987) (university may withhold information under Gov't Code § 552.103 predecessor to protect district attorney's interest in anticipated criminal litigation). The 81st/218th District Attorney's Office (the "district attorney's office") provides us a representation asserting the submitted information should be withheld under section 552.103 of the Government Code. Therefore, we will consider whether the information at issue may be withheld on behalf of the district attorney's office under section 552.103.

Section 552.103 of the Government Code provides in relevant 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, 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).

The district attorney's office has submitted a representation objecting to the release of the submitted information under section 552.103(a). We understand litigation was pending as of the date the department received the requests, and we find the requested information relates to the litigation. Thus, we agree section 552.103(a) is applicable to the submitted information.

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. Thus, any information obtained from or provided to all other parties in the anticipated or pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Furthermore, the submitted information involves alleged criminal activity. Information normally found on the front page of an offense or incident report is generally considered public. See *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). This office has determined section 552.103 does not except from release basic information about a crime. See Open Records Decision No. 362 at 2 (1983). Thus, with the exception of basic information, the department may withhold the submitted information under section 552.103(a) of the Government Code on behalf of the district attorney's office.

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/>

[ori_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,

A handwritten signature in black ink, appearing to read "Kavid Singh". The signature is written in a cursive style with some loops and flourishes.

Kavid Singh
Assistant Attorney General
Open Records Division

KVS/som

Ref: ID# 610088

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)