



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 26, 1998

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
Box 850137
Mesquite, Texas 75185-0137

OR98-1295

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115415.

The City of Mequite (the "city") received a request for various information relating to the requestor's arrest. You state that you will release the front page information to the requestor. You also state that some of the requested information does not exist. However, you claim that the remaining information is excepted from disclosure under sections 552.101, 552.103, 552.108 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you argue that the requested information is excepted from disclosure under section 552.103. Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, 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; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The governmental body has the burden of providing relevant facts and documents to show that 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, and (2) the information at issue is related to that litigation. *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 (1990) at 4. The governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that the requestor was arrested on various charges including unlawful carrying of a weapon, failure to carry insurance and a license on his person, and some outstanding warrants for several traffic violations. You also state that some of these criminal charges are still pending. However, absent a letter or other documentation from the District Attorney's Office or the prosecuting attorney with the litigation interest stating that the information should not be released, we conclude that you have not met your section 552.103 burden. *See* Open Records Decision No. 469 (1987) at 2. From the submitted documentation, the city has not shown that it has a litigation interest. Therefore, the requested documents may not be withheld pursuant to section 552.103.

You also assert that the information is excepted from disclosure under section 552.108. Section 552.108, the "law enforcement exception," provides in relevant part as follows:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication. . . .

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the requested information relates to a pending criminal investigation. Based upon this representation, we conclude that the release of items 3, 9, 13, 15, 17 and 18 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 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the city may withhold the information relating to these items from public disclosure.

However, it does not appear nor have you demonstrated how the release of the information in items 1, 2, 4, 5, 10, 11, 12, 15, and 20 would interfere with the detection, investigation, or prosecution of crime. Furthermore, we note that some of the information

you seek to withhold is "basic information" which must be released in accordance with section 552.108(c) of the Government Code and *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Consequently, the city must release these items to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

***Open Records Division
Office of the Attorney General***

Ref.: ID# 115415

Enclosures: Submitted documents

cc: Mr. Brady Lynn Byrum
General Delivery
Seagoville, Texas 75159-9999
(w/o enclosures)