



April 18, 2002

Ms. Kimberley Mickelson
Olson & Olson
333 Clay Street, Suite 3485
Houston, Texas 77002

OR2002-1967

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161439.

The City of Seabrook (the "city"), which you represent, received a request for the following information:

1. All correspondence, documents, writings, e-mails and materials of any kind exchanged between the [city]'s legal firm of Olsen & Olsen and the Texas Attorney General's Office regarding Open Record Requests to the city . . . for the period that Olsen & Olsen has been representing the [c]ity
2. All correspondence, documents, writings, e-mails and materials of any kind exchanged between the [city]'s legal firm of Olsen & Olsen and the [c]ity regarding fees paid or invoiced to the city by the firm relating to Item 1 listed above.
3. All correspondence, documents, writings, e-mails and materials of any kind exchanged between the [city]'s other legal firms regarding fees paid or pending bills for the period of May 1999 through January of 2002.
4. All correspondence, documents, writings, e-mails and materials of any kind exchanged between the [city] and its insurance carrier, Texas Municipal League, regarding coverage or lack of coverage for former council members and staff involved in lawsuits.

5. All correspondence, documents, writings, e-mails and materials of any kind regarding justification of the [city] paying legal fees for current and former council members and staff being sued as individuals.

6. All correspondence, documents, writings, e-mails and materials of any kind regarding justification for the [city] paying legal fees for Tom Knickerbocker.

7. All correspondence, reports, mug shots, minutes, documents, writings, e-mails and materials of any kind related to the discharge of a firearm by Jerry Larson in Seascape subdivision as reported on in The Citizen Newspaper (page 5) on January 30, 2002.

You state that the city has released information responsive to items 1, 2, 3, 5, and 6 to the requestor. You claim that a portion of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You argue that section 552.103 of the Government Code excepts the information in Tab B-1 from public disclosure. Section 552.103 provides 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.

The city 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. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *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 city must meet both prongs of this test for information to be excepted under 552.103(a).

You inform us that the city was sued on April 10, 2001 in Cause No. 2001-15173, *Seabrook Partners, LTD. v. City of Seabrook*, and on October 4, 2001 in Cause No. C-2001-51220, *Ted McCollom v. City of Seabrook*. You have provided copies of pleadings from the two lawsuits, showing the city as a party. Based upon your representations and our review of the submitted documents, we find that litigation was pending on February 13, 2002, the date that the city received the request for information, and that the information that we have marked is related to that litigation. The city may, therefore, withhold the marked information from public disclosure under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

You claim that the submitted information in Tab B-2 and the 9-1-1 audio tape are protected from disclosure under section 552.108 of the Government Code. Section 552.108 provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 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[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication [.]

Gov't Code § 552.108(a)(1),(a)(2), (b)(1), (b)(2). A governmental body that raises section 552.108 must reasonably explain, if the information in question does not supply an explanation on its face, how and why section 552.108 is applicable to that information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

Generally speaking, sections 552.108(a)(1) and 552.108(a)(2) apply to two mutually exclusive types of information held by a law enforcement agency. The same is true for sections 552.108(b)(1) and 552.108(b)(2), which are also mutually exclusive. Sections 552.108(a)(1) and (b)(1) protect information that pertains to a pending criminal investigation or prosecution. In contrast, sections 552.108(a)(2) and (b)(2) protect records that pertain to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. You inform this office that the submitted information pertains to an investigation that remains open and pending. Based on your representation, we conclude that the submitted information pertains to an open case and that release of the information would interfere with the detection, investigation, or prosecution of a 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, except as noted below, the city may withhold the information that you have marked under section 552.108(a).

Section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). Basic information that must be released includes, but is not limited to, an arrestee's name, offense committed, property involved, vehicle involved, detailed description of the offense, booking information, the charge, and bonding information. Open Records Decision No. 127 at 4-5 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the incident report.¹

The submitted records in Tab B-2 also contain motor vehicle information, which is excepted from public disclosure under section 552.130. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

¹As section 552.108 is dispositive regarding the submitted account numbers, we do not address your section 552.136 claim.

(2) a motor vehicle title or registration issued by an agency of this state[.]

The city must withhold the Texas driver's license numbers, vehicle identification numbers, and license plate numbers under section 552.130.

In summary, with the exception of basic information, which must be released, the city may withhold the information in Tab B-1 that we have marked under section 552.103, and the information in Tab B-2 that you have marked under section 552.108(a). The city must withhold the Texas driver's license numbers, vehicle identification numbers, and license plate numbers under section 552.130.²

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

²As the above exceptions are dispositive, we do not address your remaining arguments.

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 161439

Enc. Submitted documents

c: Mr. Chuck Cheadle
1212 North Heron Drive
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(w/o enclosures)