



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 3, 2009

Ms. Cara Leahy White  
Taylor, Olson, Adkins, Sralla, & Elam  
6000 Western Place, Suite 200  
Ft. Worth, Texas 76107-4654

OR2009-10673

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# 350929.

The Southlake Police Department (the "department"), which you represent, received a request for eight categories of information pertaining to a specified citation, as well as the department's Federal Communications Commission license. You indicate some of the requested information does not exist.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, 552.117, 552.130, and 552.147 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted documents contain names, salary information, titles, and dates of employment of department officers that are subject to section 552.022 of the Government Code. Section 552.022(a)(2) provides for required public disclosure of "the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[,]" unless that information is expressly confidential under other law. Gov't Code § 552.022(a)(2). Although you seek to withhold this information under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to public disclosure that protect a governmental body's interests and may be

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<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.- San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

<sup>2</sup>Although you raise section 552.1175 of the Government Code, we note that section 552.117 is the proper exception to claim for information relating to employees of the department.

waived. *See id.* § 552.007; *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 Nos. 586 (1991) (governmental body may waive section 552.108), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, sections 552.103 and 552.108 are not “other law” for the purposes of section 552.022(a)(2). Therefore, the department may not withhold the information subject to section 552.022(a)(2), which we have marked, under section 552.103 or 552.108. We will, however, consider the department’s claim under sections 552.103 and 552.108 with respect to the remaining information that is not subject to section 552.022.

You raise section 552.108 of the Government Code for the remaining information not subject to section 552.022 of the Government Code. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note the remaining information includes a citation. Because the citation has been provided to the individual who was cited, we find release of this information will not interfere with the detection, investigation, or prosecution of crime. *See Gov’t Code* § 552.108(a)(1). Therefore, the department may not withhold the citation, which we have marked, under section 552.108(a)(1). You state the submitted information relates to an ongoing criminal prosecution in the City of Southlake’s Municipal Court. Based on this representation and our review, we conclude the department may withhold the remaining information at issue under section 552.108(a)(1).<sup>3</sup> *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).

We next address your claim under section 552.103 of the Government Code for the submitted citation. Section 552.103 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.

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<sup>3</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

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(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 department 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 university 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, 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 department must meet both prongs of this test for information to be excepted under section 552.103(a).

The department explains the submitted information relates to pending litigation. We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information that is related to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. The submitted citation was provided to the individual who was cited; thus, the citation was inevitably seen by the opposing party to the litigation. Therefore, the submitted citation may not be withheld under section 552.103 of the Government Code.

You also raise section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). We have marked information contained in the citation that is subject to section 552.130. We note, however, the requestor may be the attorney of the individual whose information is at issue. As such, the requestor may have a right of access to this information as that individual's authorized representative. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). In this instance, it is not clear that the requesting attorney is acting as that individual's authorized representative. Therefore, we rule conditionally. To the extent the requestor has a right of access under section 552.023 to the Texas motor vehicle record information contained in the citation, the department must release the individual's information to the requestor. To the extent the requestor does not

have a right of access under section 552.023, the department must withhold the information belonging to that individual under section 552.130.

In summary, the department must release the information we have marked under section 552.022(a)(2). With the exception of the marked citation, the department may withhold the remaining information under section 552.108(a)(1). If the requestor is not the authorized representative of the individual whose information is at issue in the citation, the department must withhold the information we have marked in the citation under section 552.130; however, if the requestor is that individual's authorized representative, the citation must be released in its entirety.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 350929

Enc. Submitted documents

c: Requestor  
(w/o enclosures)