



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 22, 2009

Ms. Tracy Freimarck  
City Secretary  
City of Windcrest  
8601 Midcrown  
Windcrest, Texas 78239-2516

OR2009-18173

Dear Ms. Freimarck:

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# 370072.

The City of Windcrest (the "city") received a request for information pertaining to a specified case number. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. You state you have notified an individual to whom the requested information relates pursuant to section 552.304 of the Government Code. *See Gov't Code § 552.304* (any person may submit written comments stating why information at issue in request for Attorney General ruling should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a). 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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note the submitted information includes court summons. Because the summons have been provided to the individuals who were 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 city may not withhold the summons, which we have marked, under section 552.108(a)(1). You state the submitted information relates to a pending criminal case. Based on this representation and our review, we conclude section 552.108(a)(1) is applicable to the remaining information. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14<sup>th</sup> 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).

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. Therefore, the city must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the submitted summons and basic information, the city may withhold the submitted information under section 552.108(a)(1).<sup>1</sup>

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

...

(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 city has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument under section 552.103 of the Government Code for this information, except to note that section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). See Open Records Decision No. 597 (1991).

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

The city explains the submitted summons relate 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 summons were provided to the individuals who were cited; thus, the summons were inevitably seen by the opposing parties to the litigation. Therefore, the submitted summons may not be withheld under section 552.103 of the Government Code.

We note portions of the submitted summons are subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 excepts from 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[.]” Gov’t Code § 552.130. Therefore, the city must withhold the marked Texas motor vehicle record information under section 552.130 of the Government Code.<sup>3</sup>

In summary, with the exception of basic information and the marked summons, the submitted information may be withheld under section 552.108 of the Government Code. The information we have marked in the submitted summons must be withheld under

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note the requestor has a right of access to his own Texas driver’s license information. *See* Gov’t Code § 552.023 (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”). We further note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver’s license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. Accordingly, if the city receives another request that encompasses the requestor’s Texas driver’s license number from an individual other than one with a right of access under section 552.023, the city is authorized to withhold the requestor’s driver’s license number under section 552.130 without the necessity of requesting an attorney general decision.

section 552.130 of the Government Code. Basic information and the remaining information in the submitted summons must be released.

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, toll free, at (888) 672-6787.

Sincerely,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/dls

Ref: ID# 370072

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Jose Luis Ortiz  
6514 Forest Village  
San Antonio, TX 78250  
(w/o enclosures)