



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2011

Mr. Hyattye O. Simmons
General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2011-09491

Dear Mr. Simmons:

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# 427196 (ORRs 8284 and 8283).

The Dallas Area Rapid Transit ("DART") received two requests for information related to a specified incident. You claim that the requested 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.

Section 552.108 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

We note that the submitted information includes a citation. Because a copy of the citation has been provided to the individual who was cited, we find that its release will not interfere

with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, DART may not withhold the citation under section 552.108(a)(1).

You state, and provide a representation from DART's police department stating, that the submitted information pertains to a pending criminal investigation. Based on your representation and our review of the submitted documents, we find that the release of the remaining information 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108 is applicable to this information.

However, we note that 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). Basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of the citation and basic information, DART may withhold the submitted information under section 552.108(a)(1).¹

You also seek to withhold the citation under section 552.103 of the Government Code. Section 552.103 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 purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See id.*

¹We note that section 552.103 of the Government Code does not generally except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

§ 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was 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, 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You inform us, and provide a representation from DART's police department stating, the submitted information relates to a criminal prosecution pending in court. 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 parties in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. As discussed above, the submitted citation was provided to the individual who was cited; thus, the citation was seen by the opposing party to the litigation. Therefore, the citation may not be withheld under section 552.103 of the Government Code.

We note that the citation contains information that is subject to section 552.130 of the Government Code. Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or personal identification document issued by a Texas agency. See Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). Upon review, we find DART must withhold the Texas driver's license information we have marked in the citation under section 552.130 of the Government Code.

In summary, with the exception of the citation and basic information, DART may withhold the submitted information under section 552.108(a)(1) of the Government Code. DART must withhold the information we have marked under section 552.130 of the Government Code. The citation and basic information 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, 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,

A handwritten signature in cursive script that reads "Paigelay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/eb

Ref: ID# 427196

Enc. Submitted documents

cc: 2 Requestors
(w/o enclosures)