



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 19, 2013

Mr. Peter G. Smith
City Attorney
City of Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2013-10317

Dear Mr. Smith:

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# 490822 (Richardson File No. 13-259).

The Richardson Police Department (the "department") received a request for all information pertaining to a specified report. You state you have released some of the submitted information to the requestor. You claim the remaining submitted 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.

Initially, we note the submitted documents contain information pertaining to the analysis of a blood specimen obtained by a peace officer. Section 724.018 of the Transportation Code provides that "[o]n the request of a person who has given a specimen at the request of a peace officer, *full information* concerning the analysis of the specimen shall be made available to the person or the person's attorney." Transp. Code § 724.018 (emphasis added). We find that "full information" under section 724.018 refers to the results of the analysis of the specimen, and includes the "Toxicology/Blood Alcohol Kit Laboratory Submission Form." In this instance, the requestor is the person who gave the blood specimen at the request of a peace officer. Although you seek to withhold the information at issue under sections 552.103 and 552.108 of the Government Code, a specific statutory right of access provision prevails over general exceptions to disclosure under the Act. *See* Open Records Decision No. 451 at 4 (1986) (specific statutory right of access provisions overcome general

exceptions to disclosure under statutory predecessor to Act). Therefore, the department must release the information at issue, which we have marked, to this requestor pursuant to section 724.018 of the Transportation Code.

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information at issue in Exhibit C relates to an active and pending criminal case. Based on your representations, we conclude release of most of the information at issue 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).

We note, however, Exhibit C includes a citation. Because a copy of the citation is provided to the person who is the subject of the citation, we find release of the citation 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 for release, under section 552.108. However, we find the department may withhold the remaining information at issue under section 552.108(a)(1) of the Government Code.¹

You also claim the citation is excepted under section 552.103 of the Government Code, which provides:

(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.

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Id. § 552.103(a), (c). The governmental body 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 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). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

We note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information related to litigation through the discovery process. *See* Open Records Decision No. 551 at 4-5. If the opposing party has seen or had access to information related to pending or anticipated litigation, through discovery or otherwise, then there is no interest in withholding that information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). In this instance, you state the citation is related to an anticipated or pending prosecution. You indicate the recipient of the citation is the defendant in the prosecution. Thus, as the opposing party in the litigation has already seen the citation, we conclude the department may not withhold the citation under section 552.103 of the Government Code.

In summary, the department must release the information we have marked to this requestor pursuant to section 724.018 of the Transportation Code. With the exception of the marked citation, which the department must release, the department may withhold the remaining information in Exhibit C under section 552.108(a)(1) of the Government Code.²

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.texasattorneygeneral.gov/open/>

²We note the information being released includes the requestor's motor vehicle record information, which is excepted from public disclosure under section 552.130 of the Government Code. Because this section protects privacy, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987). The department is now authorized to redact motor vehicle record information under section 552.130(c) without the necessity of requesting a decision under the Act. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). Thus, should the department receive another request for the submitted information from a different requestor, the department is authorized to withhold the requestor's motor vehicle record information without requesting another ruling.

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/tch

Ref: ID# 490822

Enc. Submitted documents

c: Requestor
(w/o enclosures)