ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2014

Lieutenant Jeff Skinner
Records Division
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704-3827

Mr. Quentin D. Price
First Assistant City Attorney
City of Beaumont
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2014-08509

Dear Lieutenant Skinner & Mr. Price:

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# 523034.

The Beaumont Police Department and the City of Beaumont (collectively, the "city") received two requests for information regarding a specified motor vehicle accident involving a department officer and the requestor's client.[1] You state some responsive information has been provided to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.136 of the

[1]You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

Government Code.[2] We have considered the exceptions you claim and reviewed the submitted information, portions of which consist of a representative sample of the requested information.[3]

Initially, we note the submitted information contains a CR-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c) or (e), accident reports are privileged and for the confidential use of certain specified entities. Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.*

In this instance, the requestor has provided the city with the requisite information for the CR-3 accident report. Although you seek to withhold this information under sections 552.103 and 552.108 of the Government Code, we note information specifically made public by statute may not be withheld from the public under the general exceptions to public disclosure under the Act. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, the city must release this report in its entirety to the requestor pursuant to section 550.065(c)(4) of the Transportation Code.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

> (a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:
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> . . .

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[2]Although you seek to withhold drivers licenses and e-mail addresses under section 552.101 of the Government Code, we note the correct exceptions to claim for these types of information are sections 552.130 and 552.137 of the Government Code, respectively.

[3]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

> (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;
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> . . .
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> (17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(3), (17). The submitted information contains information in an account related to the expenditure of funds by the city that is subject to subsection 552.022(a)(3) and a court-filed document that is subject to subsection 552.022(a)(17). These documents must be released unless they are made confidential under the Act or other law. *See id.*

Although you seek to withhold the information in an account under section 552.103 of the Government Code and the court document under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions and do not make information confidential under the Act. *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 Gov't Code section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code section 552.108 subject to waiver). As such, sections 552.103 and 552.108 do not make information confidential for the purposes of section 552.022. Accordingly, the information subject to section 552.022 may not be withheld under section 552.103 or section 552.108.

However, the city asserts portions of the court document are subject to section 552.130, which makes information confidential under the Act. We will therefore address the applicability of section 552.130 for the information that is subject to section 552.022. We will also address your claims for the information not subject to section 552.022.

You seek to withhold the remaining information in Exhibit B under section 552.108 of the Government Code. Section 552.108 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 claiming 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 the information at issue includes a DIC-24 statutory warning and a DIC-25 notice of suspension. Copies of these forms were provided to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Accordingly, the DIC-24 and DIC-25 forms may not be withheld under section 552.108.

You state release of the remaining information in Exhibit B will interfere with a pending criminal investigation by the city's police department. Based on this representation, we find the city has demonstrated release of the 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).

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; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of the DIC-24 and DIC-25 forms and basic information, the city may withhold the remaining submitted information in Exhibit B under section 552.108(a)(1) of the Government Code.[4]

You claim the remaining records not subject to section 552.022 are excepted from public disclosure under section 552.103 of the Government Code. Section 552.103 provides in relevant 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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> . . .
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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 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*

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[4]As we make this determination, we need not address your remaining arguments against disclosure of this information.

Sch. v. Tex. Legal Found., 958 S.W.2d 479,481 (Tex. App.—Austin 1997, orig. proceeding); *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). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. *See* Open Records Decision No. 361 (1983).

In Open Records Decision No. 638 (1996), this office stated that a governmental body has met its burden of showing that litigation is reasonably anticipated when it received a notice of claim letter and the governmental body represents that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act ("TTCA"), chapter 101 of the Texas Civil Practice and Remedies Code, or an applicable municipal ordinance. *See* ORD 638 at 4. If that representation is not made, the receipt of a claim letter is a factor we will consider in determining, from the totality of the circumstances presented, whether the governmental body has established that litigation is reasonably anticipated. *Id.*

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* ORD 551 at 4-5. Thus, any information obtained from or provided to all other parties in the anticipated or pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. The submitted DIC-24 and DIC-25 forms were provided to the arrestee; thus, these forms were inevitably seen by the opposing party to the litigation. Furthermore, basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. *See* Open Records Decision No. 597 (1991). Therefore, the city may not withhold the DIC-24 and DIC-25 forms or basic information in Exhibit B under section 552.103 of the Government Code.

You assert the city anticipates litigation involving the requestor's client because the second request letter contains a threat to sue the city. You have provided a copy of a notice of claim letter from the requestor to the city alleging a city employee caused his client's injuries in a

motor vehicle accident and seeking specified damages. You do not affirmatively represent to this office that the notice of claim complies with the TTCA or an applicable ordinance; therefore, we will only consider the claim as a factor in determining whether the department reasonably anticipated litigation over the incident in question. Nevertheless, based on your representations, our review of the information at issue, and the totality of the circumstances, we find the city has established it reasonably anticipated litigation at the time it received the clarified request. We further find the information at issue in Exhibits 5 and 6 relates to the anticipated litigation. Accordingly, the city may withhold the remaining information in Exhibits 5 and 6 pursuant to section 552.103(a) of the Government Code.

As noted above, once information has been obtained by all parties to the anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). 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).

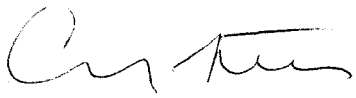
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. The city seeks to withhold the motor vehicle record information in the court document under section 552.130. We note, however, section 552.130 protects personal privacy. In this instance, the motor vehicle information pertains to the requestor's client. Accordingly, the requestor has a right of access to his client's motor vehicle record information under section 552.023 of the Government Code and the city may not withhold it from him under section 552.130 of the Government Code. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

In summary, the city must release the submitted CR-3 accident report under section 550.065(c) of the Transportation Code. The city also must release the records we have marked pursuant to section 552.022 of the Government Code. Except for the DIC-24 and DIC-25 forms and basic information, which must be released, the city may withhold the remaining information in Exhibit B under section 552.108(a)(1) of the Government Code. The city may withhold the remaining information in Exhibits 5 and 6 pursuant to section 552.103(a) of the Government Code.

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/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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 523034

Enc. Submitted documents

c: Requestor
(w/o enclosures)