



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2014

Ms. Julie P. Doshier
Counsel for the City of Highland Village
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower, 500 North Akard
Dallas, Texas 75201

OR2014-10132

Dear Ms. Doshier:

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# 525703 (NJDHS File Reference Nos. 65484 and 65915).

The City of Highland Village (the "city"), which you represent, received two requests for information pertaining to a specified incident involving two named individuals. You claim the 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.

Section 552.103 of the Government Code provides 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). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception 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 state the submitted information relates to a criminal case against that was filed with the city's municipal court prior to the city's receipt of the request for information. You also state, and have submitted a representation from the city prosecutor stating, the prosecution of this criminal case is currently pending because the defendant in the case at issue has plead not guilty and requested a trial by jury, and release of the submitted information would interfere with that prosecution. You explain the submitted information forms the basis of the criminal prosecution. Based on your representations and our review of the submitted documents, we find the information at issue relates to litigation that was pending when the city received this request for information. Accordingly, we find the submitted information is generally subject to section 552.103 of the Government Code.

However, the information at issue involves alleged criminal activity. Information normally found on the front page of an offense or incident report is generally considered public. *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); *see* Open Records Decision No. 127 (1976). This office has stated basic information about a crime may not be withheld under section 552.103 even if it is related to the litigation. Open Records Decision No. 362 (1983). Thus, we find the basic offense information from the offense report may not be withheld on the basis of section 552.103. Therefore, with the exception of basic information, which the city must release, the city may withhold the submitted information under section 552.103(a) of the Government Code.¹

We note once the information has been obtained by all parties to the pending litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note that the

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

applicability of section 552.103(a) ends when the litigation is concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (1982).

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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/tch

Ref: ID# 525703

Enc. Submitted documents

c: Two Requestors
(w/o enclosures)