



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 27, 2015

Mr. Gunnar P. Seaquist
Counsel for the City of Wimberley
Bickerstaff Heath Delgado Acosta, L.L.P.
Building One, Suite 300
3711 South MoPac Expressway
Austin, Texas 78746

OR2015-05930

Dear Mr. Seaquist:

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# 557796.

The City of Wimberley (the "city"), which you represent, received a request for a specified prosecutor's file. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information.

Section 552.103 of the Government Code 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). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate (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 the pending or anticipated litigation. See *Univ. of Tex. Law 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.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). See Open Records Decision No. 551 at 4 (1990).

The city states, and provides documentation showing, prior to the city's receipt of the instant request, the city's municipal prosecutor filed a case against the requestor for violation of city noise ordinances in the Wimberley Municipal Court in Hays County, Texas. The city explains that while the requestor entered into a plea agreement for a deferred disposition, the case remains pending until the defendant completes his probationary period. Therefore, we agree litigation involving the city was pending on the date the city received the present request for information. Further, the city explains the submitted information consists of the prosecutor's file in the pending prosecution. Based on these representations and our review, we find the submitted information is related to the pending litigation.

We note, however, basic information about a crime must be released. See Open Records Decision No. 362 (1983). Information normally found on the front page of an offense report is generally considered public and must be released. See *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); Open Records Decision No. 127 (1976). This office has stated basic information about a crime may not be withheld under section 552.103 of the Government Code even if it is related to the litigation. ORD 362. Therefore, with the exception of basic information, the city may withhold the submitted information under section 552.103 of the Government Code.¹

Generally, however, once information has been obtained by all parties to the 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). Thus, information that has either been obtained from or provided to all parties to the pending litigation is not

¹As our ruling is dispositive, we need not address the city's remaining argument against disclosure.

excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 557796

Enc. Submitted documents

c: Requestor
(w/o enclosures)