



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 29, 2015

Ms. Marie Rovira
Assistant City Attorney for the Town of Addison
Messer, Rockefeller & Fort, PLLC
6351 Preston Road, Suite 350
Frisco, Texas 75034

OR2015-12857

Dear Ms. Rovira:

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# 569061.

The Town of Addison (the "town"), which you represent, received a request for all arrest reports relating to certain offenses committed at a specified place of business during a specified time period.¹ You state the town redacted information pursuant to section 552.147(b) of the Government Code.² You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We

¹We note the town received clarification of the request for information. *See* Gov't Code §552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Section 552.103 of the Government Code provides, in relevant part, the following:

(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 applies 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 requested information is related to that 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.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both parts of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* 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)

³We assume 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.

(litigation must be “realistically contemplated”). On the other hand, this office has determined 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).

You assert the information in Exhibits 3 and 4 is excepted under section 552.103 of the Government Code because the town reasonably anticipated litigation relating to the death of an individual in a specified motor vehicle collision. In support of your assertion, you have submitted the town’s attorney suit status report filed with the Texas Municipal League Intergovernmental Risk Pool. However, we note the supporting information states the town “has not received a notice of claim relating to this matter and there has been no other suggestion of litigation.” Further, the supporting information also states the town “[does] not believe there is any applicable waiver of [the town’s] governmental immunity.” Additionally, you have submitted a lawsuit filed by the decedent’s family in relation to the specified motor vehicle collision. We note the pleading at issue does not list the town as a party to the lawsuit and, therefore, the town does not have a litigation interest in the matter for purposes of section 552.103. *See* Gov’t Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (stating that predecessor to section 552.103 only applies when governmental body is party to litigation). In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103(a). However, the town has not provided this office with an affirmative representation from a governmental body with a litigation interest explaining that it seeks to withhold the information at issue pursuant to section 552.103(a). Further, we find the town has not demonstrated any party had taken concrete steps toward filing litigation when the town received the request for information. Thus, we conclude the town has failed to demonstrate it reasonably anticipated litigation when it received the request for information. Accordingly, the town may not withhold the submitted information under section 552.103 of the Government Code.

Section 552.108(a)(1) 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 claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information in Exhibit 4 pertains to pending criminal investigations and prosecutions. Based on your representation, we conclude the release 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). Therefore, we agree that section 552.108(a)(1) is applicable to Exhibit 4.

However, section 552.108 does not except from disclosure basic information about a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d at 186–87. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered basic information). Thus, with the exception of basic information, the town may withhold Exhibit 4 under section 552.108(a)(1) of the Government Code.

You state the town redacted some information pursuant to section 552.130(c) of the Government Code.⁴ 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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. The town must withhold the additional motor vehicle record information we have marked under section 552.130 of the Government Code.

You also state the town redacted personal e-mail addresses pursuant to section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009).⁵ Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Accordingly, the town must withhold the additional personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, with the exception of basic information, the town may withhold Exhibit 4 under section 552.108(a)(1) of the Government Code. The town must withhold the additional information we have marked under section 552.130 of the Government Code and section 552.137 of the Government Code, unless the owners of the personal e-mail addresses affirmatively consent to their public disclosure. The town must release the remaining information.

⁴Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

⁵Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

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,

A handwritten signature in cursive script that reads "Britni Fabian".

Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 569061

Enc. Submitted documents

c: Requestor
(w/o enclosures)