



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2015

Ms. Lauren F. Crawford
First Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805-1000

OR2015-15508

Dear Ms. Crawford:

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# 579032.

The City of Bryan (the "city") received a request for information pertaining to case number 15-0500137. You state the city has released some of the requested information. 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 552.108(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 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).

We note the submitted information includes a criminal trespass warning. Because the warning has been provided to the individual who was the subject of the warning, we find release of this information will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the city may not withhold the criminal trespass warning, which we have marked, under section 552.108(a)(1).

You state the remaining information relates to a pending criminal prosecution. Based on this representation, we find the city has demonstrated release of this 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 531 S.W.2d at 186-88. The city must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. *See Open Records Decision No. 127 at 3-4 (1976)* (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the criminal trespass warning and basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

You also claim the criminal trespass warning is excepted under section 552.103 of the Government Code. Section 552.103 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 claiming section 552.103 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 is pending or reasonably anticipated on the date the governmental body received the request, 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,

¹As our ruling under section 552.108 is dispositive, we need not address your remaining argument against disclosure of this information, except to note that basic information may generally not be withheld from public disclosure under section 552.103 of the Government Code. *See Open Records Decision No. 597 (1991)*.

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).

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. 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 criminal trespass warning is related to a pending prosecution. We note the recipient of the warning is the defendant in the prosecution. Thus, as the opposing party in the litigation has already seen the criminal trespass warning, we conclude the city may not withhold the warning under section 552.103 of the Government Code.

In summary, with the exception of the criminal trespass warning and basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. The city must release the criminal trespass warning and basic information.

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# 579032

Enc. Submitted documents

c: Requestor
(w/o enclosures)