



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 18, 2015

Ms. Ann-Marie Sheely
Assistant County Attorney
Transactions Division
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2015-17088

Dear Ms. Sheely:

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# 575796.

The Travis County Sheriff's Office (the "sheriff's office") received a request for five categories of information related to a named individual. 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. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note a portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) of the Government Code provides for the required disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless it is excepted by section 552.108 of the Government Code or made confidential under the Act or other law. *Id.* § 552.022(a)(1). Upon review, we find police report number 15-6053 and the related records consist of records of a completed investigation. You raise section 552.103 of the Government Code for this information. However, section 552.103 does not make information confidential. *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 section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the sheriff's office may not withhold the information at issue under section 552.103 of the Government Code. Nonetheless, we will consider your assertion of section 552.108 for the information at issue.

We will also consider your argument under section 552.103 for the remaining information, which is not subject to section 552.022 of the Government Code.

Section 552.103 of the Government Code provides in relevant part 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). The 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 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 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).

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). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* 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 Civil Practice and Remedies Code, or an applicable municipal ordinance. 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 litigation is reasonably anticipated.

You assert the information not subject to section 552.022 of the Government Code is excepted from disclosure under section 552.103 of the Government Code. You state, and provide documentation showing, that prior to the sheriff's office's receipt of the request, the

sheriff's office received a claim letter from an attorney representing the estate of the named individual. The letter purports to be a notice of claim letter in compliance with the TTCA and demands the sheriff's office preserve specified categories of evidence, under the threat of sanctions for spoliation of evidence. You do not represent the notice of claim letter is in compliance with the requirements of the TTCA or an applicable ordinance; therefore, we will only consider the notice of claim as a factor in determining whether the sheriff's office reasonably anticipated litigation regarding the incident at issue. Nevertheless, based on your representations, our review of the information at issue, and the totality of the circumstances, we find the sheriff's office reasonably anticipated litigation on the date it received the request for information. We further find the information at issue relates to the anticipated litigation. Accordingly, the sheriff's office may withhold the information that is not subject to section 552.022 of the Government Code under section 552.103 of the Government Code.¹

We note 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). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. 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 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state the information subject to section 552.022 of the Government Code pertains to a concluded criminal investigation that did not result in conviction or deferred adjudication. However, the requestor asserts the submitted information does not relate to a criminal investigation. Whether the information at issue relates to a criminal investigation is a question of fact. Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* ORD 552 at 4. Therefore, based on your representations and our review, we find section 552.108(a)(2) is applicable to the information at issue.

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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

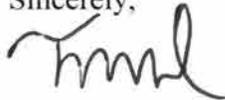
to the basic “front-page” information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the sheriff’s office may withhold the information subject to section 552.022 of the Government Code under section 552.108(a)(2) of the Government Code.²

In summary, the sheriff’s office may withhold the information not subject to section 552.022 of the Government Code under section 552.103 of the Government Code. With the exception of basic information, which must be released, the sheriff’s office may withhold the information subject to section 552.022 of the Government Code under section 552.108(a)(2) of the Government Code.³

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

³We note this ruling does not affect an individual’s right of access to his or her own mental health records from the professional who provided treatment under chapter 611 of the Health and Safety Code. See Health & Safety Code §§ 611.004, .0045; cf. *Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (Medical Practice Act, subtitle B of title 3 of the Occupations Code, does not provide patient general right of access to his or her medical records from governmental body responding to a request for information under the Act).

Ref: ID# 575796

Enc. Submitted documents

c: Requestor
(w/o enclosures)