



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2016

Mr. Omar A. De La Rosa
Assistant City Attorney
City of El Paso
P. O. Box 1890
El Paso, Texas 79950-1890

OR2016-10179

Dear Mr. De La Rosa:

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# 608718 (Case# 16-1026-7151).

The El Paso Police Department (the "department") received a request for two specified case reports involving two named individuals. You state you will release some information to the requestor. We also understand the department will redact public citizens' dates of birth pursuant to the previous determination in Open Records Letter No. 2016-10113 (2016).¹ You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides as follows:

¹Open Records Letter No. 2016-10113 authorizes the department to withhold public citizens' dates of birth without the necessity of requesting an attorney general decision. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations).

²We note although you raise section 552.101 of the Government Code in conjunction with constitutional privacy, you make no arguments to support this claim. Therefore, we assume you have withdrawn your claim that the submitted information is protected by constitutional privacy. *See* Gov't Code §§ 552.301, .302.

(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 the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (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, 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and submit documentation demonstrating, case number 13-255095 relates to a pending criminal prosecution, Cause Number 20150D00690, in the 168th District Court. We note the department is not a party to the pending prosecution and, therefore, 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 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. You inform us, and submit documentation demonstrating, the Office of the District Attorney for the 34th Judicial District objects to the release of the information at issue. You further indicate the information at issue is related to the litigation. Based on these representations and our review, we agree litigation was pending on the date the request was received and that the information at issue relates to this litigation. Therefore, case number 13-255095 may generally be withheld under section 552.103 of the Government Code.

We note, 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) (summarizing types of information considered to be basic information). 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 litigation. Open Records Decision No. 362 (1983). Thus, we find the basic offense information from case number 13-255095 may not be withheld on the basis of section 552.103. Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; see also ORD 127. Therefore, with the exception of basic information, which must be released, the department may withhold the information at issue under section 552.103 of the Government Code

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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties 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 information concerning an investigation that concluded in a result other than 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. The department asserts case number 15-033153 pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the information at issue.

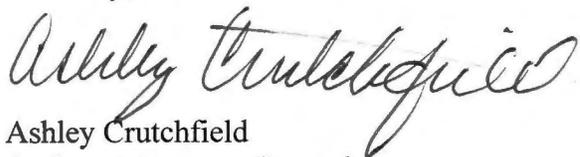
However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [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). See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may withhold case number 15-033153 under section 552.108(a)(2) of the Government Code.

In summary, the department may, with the exception of basic information, withhold case number 13-255095 under section 552.103(a) of the Government Code. The department may, with the exception of basic information, withhold case number 15-033153 under section 552.108(a)(2) of the Government Code. The department must release the 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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 608718

Enc. Submitted documents

c: Requestor
(w/o enclosures)