



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 28, 2016

Mr. Robert Spangler
Counsel for Jim Wells County Sheriff's Office
Royston, Rayzor, Vickery & Williams, LLP
802 North Carancahua, Suite 1300
Corpus Christi, Texas 78401

OR2016-14636

Dear Mr. Spangler:

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# 616233 (Reference No. 61099).

The Jim Wells County Sheriff's Office (the "sheriff's office"), which you represent, received a request for information pertaining to a specified incident involving the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.115, 552.1175, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides 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

¹We note the sheriff's office did not raise section 552.115 or section 552.130 of the Government Code within ten business days of the date the sheriff's office received the request. *See* Gov't Code § 552.301(b). However, because section 552.115 and section 552.130 are mandatory exceptions that can provide compelling reasons to withhold information from disclosure, we will address the applicability of these exceptions to the submitted information, notwithstanding the sheriff's office's violation of section 552.301(b) in raising these exceptions. *See id.* § 552.302. Although you raise section 552.117 of the Government Code for the submitted information, we note section 552.1175 is the proper exception to raise for information held in a non-employment context.

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). See ORD 551.

To demonstrate that litigation is reasonably anticipated, the 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.* We note that the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. See Open Records Decision No. 361 (1983). In Open Records Decision No. 638 (1996), this office stated that, when a governmental body receives a notice of claim letter, it can meet its burden of showing that litigation is reasonably anticipated by representing that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act (the "TTCA"), Civil Practice and Remedies Code, chapter 101, or an applicable municipal ordinance. If that representation is not made, the receipt of the 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. See ORD 638 at 4.

You state, and provide documentation showing, in conjunction with the instant request for information, the sheriff's office received a notice of claim letter asserting personal injuries and damages as a result of the incident at issue in the requested information. The letter further demands the preservation of evidence for possible litigation. You do not affirmatively represent to this office the notice of claim complies with 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 over the incident in question. Nevertheless, based on your representations, our review of the submitted information, and the totality of the circumstances, we determine the sheriff's office has established it reasonably anticipated litigation prior to the date it received the request for information. We further find the information at issue is related to the anticipated litigation for purposes of section 552.103. Accordingly, we conclude the sheriff's office may generally withhold the submitted information under section 552.103 of the Government Code.

However, we note 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 the incident report may not be withheld on the basis of section 552.103 of the Government Code. 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. We note basic information does not include motor vehicle record information protected by section 552.130 of the Government Code. *See* ORD 127 at 3-4. Therefore, with the exception of basic information, which must be released, the sheriff's office may withhold the submitted information under section 552.103 of the Government Code.²

We further 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 relating to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, 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). Further, the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

We note some of the basic information may be subject to section 552.1175 of the Government Code. Section 552.1175 provides in part:

(a) This section applies only to:

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

(2) county jailers as defined by Section 1701.001, Occupations Code[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(2), (b). To the extent the correctional officer is a county jailer as defined by section 1701.001 of the Occupations Code, section 552.1175 applies to him. We have marked the personal information of a correctional officer in the basic information. You do not inform this office, nor does any of the submitted information indicate, whether the correctional officer at issue elected to keep this information confidential in accordance with section 552.1175(b). Accordingly, to the extent section 552.1175 applies to the correctional officer, if the correctional officer elects to restrict access to his information in accordance with section 552.1175(b), then the sheriff's office must withhold the information we have marked under section 552.1175. If section 552.1175 does not apply to the correctional officer or if no election is made, the county must release the information we have marked under section 552.1175.

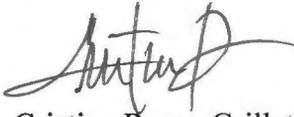
In summary, with the exception of basic information, which must be released, the sheriff's office may withhold the submitted information under section 552.103 of the Government Code. In releasing basic information, the sheriff's office must withhold the information we have marked under section 552.1175 if section 552.1175 applies to the correctional officer and the correctional officer elects to restrict access to his information in accordance with section 552.1175(b).

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 black ink, appearing to read 'Cristian Rosas-Grillet', written in a cursive style.

Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

Ref: ID# 616233

Enc. Submitted documents

c: Requestor
(w/o enclosures)