



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 5, 2015

Mr. Cary L. Bovey
Counsel for the City of Yorktown
Law Office of Cary L. Bovey
2251 Double Creek Drive, Suite 204
Round Rock, Texas 78664

OR2015-11088

Dear Mr. Bovey:

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# 566164.

The Yorktown Police Department (the "department"), which you represent, received a request for all information related to the requestor's client. You state the department will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides in part:

- (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 that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information at issue. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

You state, and have provided documentation demonstrating, a lawsuit styled *Dodds v. City of Yorktown*, Civil Action No. V-13-CA-0066-GC, was pending against the department in the United States District Court for the Southern District of Texas prior to the department's receipt of this request for information. You assert the submitted information is related to the pending litigation because it pertains to the substance of the lawsuit. Based on your representations and our review of the submitted information, we find the information at issue is related to the pending litigation for purposes of section 552.103. Therefore, we conclude the department may generally withhold the submitted information under section 552.103 of the Government Code.

We note, however, a portion of 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)*. 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 at issue may not be withheld on the basis of section 552.103. Basic information refers to the information held to be public in *Houston Chronicle*, and includes, among other items, an identification and description of the complainant and a detailed description of the offense. *See 531 S.W.2d at 186-87; ORD 127 (summarizing types of information considered to be basic information)*. However, we note basic information does not include information subject to section 552.130 of the Government Code. *See ORD 127*. Therefore, with the exception of basic information,

which must be released, the department may withhold the submitted information under section 552.103 of the Government Code.¹

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.

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,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 566164

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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