



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 11, 2017

Ms. Julie Pandya Doshier
Counsel for the City of Highland Village
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 North Akard Street, Suite 1800
Dallas, Texas 75201

OR2017-18325

Dear Ms. Doshier:

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# 670566 (Reference# 86745).

The City of Highland Village (the "city"), which you represent, received a request for a specified case pertaining to a specified address. You state the city will redact information under section 552.130(c) of the Government Code and public citizens' dates of birth pursuant to the previous determination issued in Open Records Letter No. 2016-21546 (2016).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the requested information may have been the subject of a previous ruling from this office. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, to the extent the requested information

¹We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Letter No. 2016-21546 authorized the city to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision.

is identical to the information previously requested and ruled upon, the city must continue to rely on Open Records Letter No. 2017-03457 (2017) as a previous determination, and withhold or release the previously ruled upon information in accordance with it. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the prior ruling, we will consider the exceptions you raise.

Next, we note the submitted information contains a court-filed document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record,” unless the information is made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). Although the city seeks to withhold this information under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions and do not make information confidential under the Act. *See 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); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). Accordingly, the city may not withhold the court-filed document, which we marked, under section 552.103 or section 552.108. As you raise no other exceptions to disclosure of the marked court-filed document, it must be released pursuant to section 552.022(a)(17) of the Government Code. However, we will address your arguments against disclosure of the remaining 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). The 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 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). See ORD 551 at 4.

You state a lawsuit styled *State of Texas v. Chase Alan Hansen*, Cause No. CR-2016-07912-E, was pending in County Criminal Court #5 in Denton County, Texas, prior to the city's receipt of this request for information. However, we note the city is not a party to the pending lawsuit 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) (statutory 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 it wants the information at issue withheld from disclosure under section 552.103. You state, and provide documentation demonstrating, the Denton County District Attorney's Office (the "district attorney's office") affirms it objects to the release of the requested information because of the pending litigation. You state the submitted information not subject to section 552.022 of the Government Code is related to the pending lawsuit. Upon review, we agree the information at issue is related to litigation that was pending on the date the city received the present request for information. Therefore, we conclude the city may generally withhold the submitted information not subject to section 552.022 of the Government Code under section 552.103 of the Government Code on behalf of the district attorney's office.

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 submitted information 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. Therefore, with the exception of basic information, the city may withhold the submitted


information not subject to section 552.022 of the Government Code under section 552.103 of the Government Code on behalf of the district attorney's office.²

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the city must continue to rely on Open Records Letter No. 2017-03457 as a previous determination, and withhold or release the previously ruled upon information in accordance with it. With the exception of basic information, the city may withhold the information not subject to section 552.022(a)(17) of the Government Code under section 552.103 of the Government Code on behalf of the district attorney's office. The city must release the remaining 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/bw

Ref: ID# 670566

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information, except to note that basic information may generally not be withheld from public disclosure under section 552.108 of the Government Code. See Open Records Decision No. 597 (1991).