



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 4, 2019

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar, 6th Floor, 6W
Dallas, Texas 75215

OR2019-14756

Dear Ms. McClellan:

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# 766942 (ORR Nos. D007913, D007972, D007975, D008021).

The City of Dallas (the "city") received four requests from the same requestor for information pertaining to a specified incident and the concise officer history and internal affairs resume for six named police officers. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.108 of the Government Code. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Initially, we note the requestor does not seek dates of birth, social security numbers, driver's license numbers, or internal employee identification numbers. Accordingly, these types of information are not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *Id.*

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

§ 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). We note section 552.108 is generally not applicable to records of an internal investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). You state portions of the remaining responsive information pertain to a criminal investigation that did not result in convictions or deferred adjudications. Based on your representations and our review, we conclude the information we have marked is subject to section 552.108(a)(2). However, we note the remaining information pertains solely to internal investigations conducted by the city's police department, or is not information that deals with the detection, investigation, or prosecution of crime only in relation to a criminal investigation that did not result in conviction or deferred adjudication. Therefore, the city has failed to demonstrate the applicability of section 552.108(a)(2) to the remaining information at issue, and the city may not withhold any of the remaining information on that basis.

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 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). We note basic information includes the names of the arresting officers. *See* ORD 127 at 3-4. Accordingly, with the exception of basic information, which must be released, the city may withhold the information we have marked under section 552.108(a)(2) of the Government Code.²

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 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

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

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 contend the remaining responsive information is related to pending litigation to which the city is a party. You inform us, and have provided documentation demonstrating, litigation styled *Vicki Timpa v. City of Dallas*, Civil Action No. 3:16-cv-3089-N, was pending in the Northern District of Texas, Dallas Division on the date the city received the request. You further explain the remaining responsive information is related to the pending lawsuit because it pertains to the city and the named police officers being sued for excessive use of force. Thus, we agree litigation was pending when the city received this request for information, and we find the remaining responsive information is related to the pending litigation for purposes of section 552.103.

We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information that is related to litigation through discovery procedures. See ORD 551 at 4-5. If the opposing party has obtained or otherwise been given access to the information, then there is no interest in withholding such information from public disclosure under section 552.103. See Open Records Decision Nos. 349 (1982), 320 (1982). The remaining responsive information appears to have been provided to or obtained from the opposing party. Accordingly, any documents that were provided to or were obtained from the opposing party may not be withheld from the requestor under section 552.103. Further, the applicability of section 552.103(a) ends once the litigation has concluded. See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 (1982). Thus, except for the information obtained from or provided to the opposing party to the litigation, the city may withhold the remaining responsive information under section 552.103 of the Government Code.³

You generally assert the remaining information at issue “falls within the language of a protective order.” Section 552.107(2) of the Government Code excepts from required public disclosure information if “a court by order has prohibited disclosure of the information.”

³As our ruling is dispositive, we need not address the remaining argument against disclosure, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

Upon review, we find you have failed to demonstrate that any portion of the remaining information is protected under section 552.107(2) of the Government Code.

In summary, with the exception of basic information, which must be released, the city may withhold the information we have marked under section 552.108(a)(2) of the Government Code. Except for the information obtained from or provided to the opposing party to the litigation, the city may withhold the remaining responsive information under section 552.103 of the Government Code.

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/gw

Ref: ID# 766942

Enc. Submitted documents

c: Requestor
(w/o enclosures)