



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 23, 2019

Ms. LaNetra S. Lary
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2019-20132

Dear Ms. Lary:

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# 776555.

The Fort Bend County Sheriff's Office (the "sheriff's office") received two requests from different requestors for information pertaining to a specified motor vehicle accident, including body worn and dashboard camera recordings, internal investigations, employee admonishments, emergency call logs and recordings, and the sheriff's office's preventability determination. You state the sheriff's office does not have information responsive to portions of the present requests.¹ You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²Although you also raise sections 552.101 and 552.107 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claim that these exceptions apply to the submitted information. See Gov't Code §§ 552.301, .302.

Initially, you assert one of the submitted video recordings is not responsive to the present requests for information because “[t]he requestor is only seeking information concerning the [first] video[.]” However, we note both of the present requests seek, among other types of information, dashboard camera recordings pertaining to the incident specified in the requests. Further, we note the recording at issue pertains to the specified incident. Upon review, we find the entirety of the submitted information is responsive to the present requests for information. Accordingly, we will consider your argument against disclosure of the submitted information.

Next, we note the submitted information contains a CR-3 accident report that is subject to chapter 550 of the Transportation Code. Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator’s accident report), .062 (officer’s accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

In this instance, the first requestor is a person listed under section 550.065(c). *See id.* § 550.065(c)(4)(B) (providing a governmental entity shall release the information to an authorized representative of any person involved in the accident). However, the second requestor is not a person listed under section 550.065(c). Thus, the sheriff’s office must withhold the unredacted accident report from the second requestor under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. However, section 550.065(c-1) requires the sheriff’s office to create a redacted accident report that may be requested by any person. *Id.* § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, the second requestor has a right of access to the redacted accident report. Although you assert section 552.103 of the Government Code for the information at issue, a statutory right of access prevails over the Act’s general exceptions to public disclosure. *See, e.g.,* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Because section 552.103 is a general exception under the Act, the requestors’ statutory rights of access pursuant to sections 550.065(c) and 550.065(c-1) prevail and the sheriff’s office may not withhold the information at issue under

section 552.103. Accordingly, the sheriff's office must release the submitted accident report to the first requestor pursuant to section 550.065(c) of the Transportation Code and the redacted accident report to the second requestor pursuant to section 550.065(c-1) of the Transportation Code.

Section 552.103 of the Government Code provides, in relevant 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 section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that (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). The governmental body must meet both parts of this test for information to be excepted from disclosure under section 552.103. *See* ORD 551 at 4.

To establish litigation is reasonably anticipated, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *See* Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter, prior to its receipt of a request for information, containing a specific threat to sue the governmental body from an attorney for a potential

opposing party.³ Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. ORD 452 at 4.

You assert the sheriff’s office anticipated litigation involving the first requestor’s clients prior to the receipt of the present requests for information. You state, and provide documentation demonstrating, the sheriff’s office received a letter of representation and notice of claim for money damages from the first requestor prior to the date the present requests for information were received. You also state the information at issue is related to the anticipated litigation. Based on your representations, our review of the information, and the totality of the circumstances, we find the sheriff’s office reasonably anticipated litigation on the date it received the present requests for information and the information at issue relates to the anticipated litigation. Accordingly, we find section 552.103 of the Government Code is applicable to the remaining information.

However, we note 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 the litigation. Open Records Decision No. 362 (1983). Thus, we find the basic information may not be withheld on the basis of section 552.103 of the Government Code. Accordingly, with the exception of the basic information, the sheriff’s office may withhold the remaining information under section 552.103 of the Government Code.

In summary, the sheriff’s office must release the submitted accident report to the first requestor pursuant to section 550.065(c) of the Transportation Code and the redacted accident report to the second requestor pursuant to section 550.065(c-1) of the Transportation Code. With the exception of the basic information, which must be released, the sheriff’s office may withhold the remaining 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.

³In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

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 "Blake Brennan", written in a cursive style.

Blake Brennan
Attorney
Open Records Division

BB/gw

Ref: ID# 776555

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)