



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 21, 2019

Mr. Davis Woudwyk
Assistant Criminal District Attorney
Smith County
100 North Broadway Avenue, 4th Floor
Tyler, Texas 75702

OR2019-23220

Dear Mr. Woudwyk:

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# 789824.

The Smith County Sheriff's Office (the "sheriff's office") received a request for information related to a specified incident. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions the sheriff's office claims and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The sheriff's office states the submitted information relates to an active investigation or prosecution. We note, however, the information at issue includes a citation. This document has previously been provided to the individual who was cited. Because a copy of this document has previously been released to that individual, we find the sheriff's office has not shown its release will interfere with the detection, investigation, or prosecution of crime, and this document may not be withheld under section 552.108(a)(1). *See* Gov't Code § 552.108(a)(1). Because the remaining information at issue has not been previously released, we conclude release of this information would interfere with the detection, investigation, or prosecution of

crime. Thus, we find section 552.108(a)(1) is applicable to the remaining information at issue.

However, we note 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). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

Next, we address the sheriff's office's argument under section 552.103 of the Government Code against release of the citation. Section 552.103 provides:

(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).

We 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 related to litigation through the discovery process. See ORD 551 at 4-5. Thus, any information obtained from or

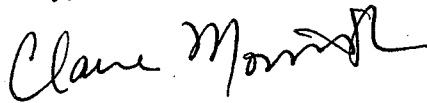
¹ As our ruling is dispositive for this information, we need not address the remaining arguments against disclosure, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

provided to all other parties in the anticipated or pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. As noted above, the submitted citation was provided to the individual who was cited. Therefore, the sheriff's office may not withhold the citation 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jxd

Ref: ID# 789824

Enc. Submitted documents

c: Requestor
(w/o enclosures)