



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 26, 2020

Ms. Dayana Chavez  
Open Records Specialist  
City of Baytown  
3200 North Main Street  
Baytown, Texas 77521

OR2020-09372

Dear Ms. Chavez:

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# 818332 (PIR# 16482).

The Baytown Police Department (the "department") received a request for information pertaining to a specified arrest. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 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 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 claiming section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (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 that 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).*

The department states, and provides documentation showing, prior to its receipt of the instant request, a lawsuit styled *Solis v. City of Baytown* was filed and is currently pending against the department in the United States District Court for the Southern District of Texas, Houston Division. Therefore, we agree litigation was pending on the date the department received the present request for information. The department also states the information at issue pertains to the substance of the lawsuit claims. Based on these representations and our review, we find the information at issue is related to the pending litigation. Therefore, we conclude the department may generally withhold the submitted information under section 552.103 of the Government Code.

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)*. This office has stated basic information about a crime may not be withheld under section 552.103 even if it is related to the litigation. *Open Records Decision No. 362 (1983)*. Thus, we find the basic offense information from the submitted report may not be withheld on the basis of section 552.103. Therefore, with the exception of basic information, which must be released, the department may withhold the submitted information under section 552.103(a) of the Government Code.<sup>1</sup>

Generally, however, once information has been obtained by all parties to the litigation though discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See Open Records Decision Nos. 349 (1982), 320 (1982)*. Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 (1982)*.

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<sup>1</sup> Additionally, as our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.108 of the Government Code. Gov't Code § 552.108(c). As we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the requested video recording. *See generally Occ. Code § 1701.661(a), (e)*.

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,

Katie Stallcup  
Attorney  
Open Records Division

AKS/rm

Ref: ID# 818332

Enc. Submitted documents

c: Requestor  
(w/o enclosures)