



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 20, 2020

Mr. Robert Schell  
Assistant County & District Attorney  
Ellis County  
109 South Jackson  
Waxahachie, Texas 75165

OR2020-18053

Dear Mr. Schell:

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# 834750.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for report number 20-03980. The sheriff's office claims 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 the sheriff's office claims and reviewed the submitted information.

Section 552.103 of the Government Code provides, in part, the following:

(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 sheriff's office has the burden of providing relevant facts and documents to show that 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 sheriff's office 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, no pet.); *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 sheriff's office must meet both prongs of this test for information to be excepted under section 552.103(a).

The sheriff's office informs us the information at issue will be presented by the Ellis County and District Attorney's Office (the "district attorney's office") for possible criminal indictment by the Ellis County Grand Jury. We note the sheriff's office is not a party to the pending case and, thus, does not have a litigation interest in the case 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). Under these circumstances, 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. Thus, we understand you to request, as an assistant district attorney for the district attorney's office, that the information at issue be withheld because it relates to the prosecution of the ongoing criminal case. Based on your representations and our review, we conclude the sheriff's office may generally withhold the information at issue on behalf of the district attorney's office under section 552.103 of the Government Code.

However, the information at issue involves alleged criminal activity. 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 of the Government Code even if it is related to the litigation. Open Records Decision No. 362 (1983). We note basic information includes, among other items, a detailed description of the offense and the identities of the complainants, but does not include dates of birth or motor vehicle record information encompassed by section 552.130 of the Government Code. *See* ORD 127 at 3-4. 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 on behalf of the district attorney's office.<sup>1</sup>

Generally, however, once information has been obtained by all parties to the litigation through 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 anticipated litigation is

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure for this information, except to note basic information described in *Houston Chronicle* is generally not excepted from public disclosure under section 552.108 of the Government Code. Open Records Decision No. 597 (1991).

not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends litigation has concluded or is no longer anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

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/gw

Ref: ID# 834750

Enc. Submitted documents

c: Requestor  
(w/o enclosures)