



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 19, 2022

Ms. Marisa Martinez
Open Records Specialist
Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2022-11258

Dear Ms. Martinez:

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# 943094 (File# P000235).

The Richardson Police Department (the "department") received a request for information pertaining to the arrest of the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes information pertaining to the analysis of a blood specimen obtained by a peace officer. Section 724.018 of the Transportation Code provides that "[o]n request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person's attorney." Transp. Code § 724.018. The requestor's client is the person who provided the specimen at the request of a peace officer. Although you claim the information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code, a specific right of access provision prevails over the Act's general exceptions to disclosure. *See* Open Records Decision No. 451 at 4 (1986). Therefore, the department must release the information we have marked pursuant to section 724.018 of the Transportation Code.

Next, we note the submitted information includes a search warrant, order for assistance, and return and inventory that were filed with a court. Section 552.022 of the Government Code provides for required public disclosure of "information that is also contained in a

public court record,” unless the information is expressly made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). Although the department seeks to withhold this information under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body’s interests and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov’t Code § 552.103); *see also* Gov’t Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). Therefore, the court-filed documents may not be withheld under section 552.103 or section 552.108. Accordingly, the department must release the search warrant, order for assistance, and return and inventory pursuant to section 552.022(a)(17) of the Government Code. However, we will address your arguments against disclosure of the remaining 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 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). You state the remaining information relates to a pending investigation. We note the remaining information includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. The department provided a copy of these forms to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Accordingly, the DIC-24 and DIC-25 forms may not be withheld under section 552.108. However, based on your representation, we find release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the remaining information.

However, as you acknowledge, 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 information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the DIC-24, and DIC-25 forms, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

Next, we address the department’s argument under section 552.103 of the Government Code against release of the Statutory Warning. Section 552.103 provides:

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(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 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. The submitted DIC-24 and DIC-25 forms were provided to the arrestee; thus, the DIC-24 and DIC-25 forms were inevitably seen by the opposing party to the litigation. Furthermore, 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). Therefore, the department may not withhold the DIC-24 and DIC-25 forms or basic information under section 552.103 of the Government Code.

In summary, the department must release the information we have marked pursuant to section 724.018 of the Transportation Code. The department must release the search warrant, order for assistance, and return and inventory pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the DIC-24, and DIC-25 forms, the department may withhold the remaining information under section 552.108(a)(1) 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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/jm

Ref: ID# 943094

Enc. Submitted documents

c: Requestor
(w/o enclosures)