



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 25, 2022

Mr. Charles Neill
Assistant County Attorney
Chambers County
P.O. Box 1200
Anahuac, Texas 77514

OR2022-11820

Dear Mr. Neill:

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# 943726 (Ref. No. 2022-008).

Chambers County (the "county") received a request for information related to a specified incident involving the requestor's client.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 representative sample of information.³

¹ You state the county sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² We note, and you acknowledge, the county did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b). However, the needs of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under section 552.103 of the Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision No. 469 (1987) (university may withhold information under Gov't Code § 552.103 predecessor to protect district attorney's interest in anticipated criminal litigation). Because you inform us the Chambers County District Attorney's Office objects to the release of the information, we will consider whether the county may withhold the information under section 552.103 on behalf of the Chambers County District Attorney's Office.

³ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records

Initially, we note the submitted information contains court-filed documents. Section 552.022(a)(17) 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). You seek to withhold the court-filed documents, which we marked, under section 552.103 of the Government Code. However, this section is a discretionary exception to disclosure that protects a governmental body’s interests and does 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* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 664 at 5 (1999) (waiver of discretionary exceptions). Therefore, you may not withhold the court-filed documents, which we marked, under section 552.103. However, as section 552.130 of the Government Code makes information confidential for purposes of section 552.022, we will consider the applicability of this exception to the information at issue.⁴ In addition, we will address your argument for the information not subject to section 552.022(a)(17).

Section 552.103 of the Government Code provides in relevant part as follows:

(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

letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

⁴ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 from disclosure under section 552.103(a).

You state the submitted information pertains to a pending criminal case that is being presented to the grand jury by the Chambers County District Attorney's Office (the "district attorney's office). We note the county is not a party to the criminal litigation. Therefore, the county does not have a litigation interest in the matter for purposes of section 552.103. See Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990). In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103(a). You inform us the district attorney's office objects to the release of the submitted information under section 552.103(a) because it relates to the pending criminal prosecution at issue. Based on this representation, we agree section 552.103(a) is applicable to the information at issue.

However, 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. See *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). This office has determined section 552.103 does not except from release basic information about a crime. See Open Records Decision No. 362 at 2 (1983). Thus, with the exception of the marked court-filed documents and basic information, the county may withhold the submitted information under section 552.103(a) of the Government Code on behalf of the district attorney's office.

We note, once the information has been obtained by all parties to the litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. See Gov't Code § 552.130. Accordingly, the county must withhold the motor vehicle record information in the court-filed documents we have marked under section 552.130 of the Government Code.

In summary, with the exception of the marked court-filed documents and basic information, the county may withhold the submitted information under section 552.103(a) of the Government Code on behalf of the district attorney's office. The county must withhold the motor vehicle record information we have marked in the court-filed documents under section 552.130 of the Government Code. The remaining information must be released.⁵

⁵ We note the requestor has a right of access to the information at issue pursuant to section 261.201(k) of the Family Code. See Fam. Code § 261.201(k). If the county receives another request for this information from

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,

Chase D. Young
Assistant Attorney General
Open Records Division

CDY/mo

Ref: ID# 943726

Enc. Submitted documents

c: Requestor
(w/o enclosures)