



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 16, 2022

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

OR2022-13889

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# 948018.

The Chambers County Attorney's Office (the "county attorney's office") received a request for information pertaining to the requestor. The county attorney's office claims the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the claimed exception and reviewed the submitted information.¹

The submitted information contains a court-filed document that is subject to section 552.022(a)(17) of the Government Code, which provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

¹ We note the information at issue contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b). However, the requestor has a right to her own social security number. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). Section 552.103 of the Government Code is discretionary 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 section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the county attorney's office may not withhold this information, which we have marked, under section 552.103. However, sections 552.130 and 552.137 of the Government Code make information confidential under the Act.² Accordingly, we will consider the applicability of these sections to the information at issue.

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. Because section 552.130 protects personal privacy, the requestor has a right of access to his own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). However, the county attorney's office must withhold the submitted driver's license number and issuing state that do not pertain to the requestor under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). We note the requestor has a right of access to his own e-mail address pursuant to section 552.137(b) of the Government Code. *See* Gov't Code § 552.137(b). However, the remaining e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). The county attorney's office does not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the county attorney's office must withhold the submitted e-mail address of a member of the public that does not pertain to the requestor under section 552.137 of the Government Code.

The county attorney's office asserts the remaining information is excepted from disclosure under section 552.103 of the Government Code, which provides, in relevant part, as follows:

² The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

(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.

Id. § 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 from disclosure under section 552.103(a).

The county states the submitted information pertains to a criminal prosecution that was pending with the Chambers County District Attorney's Office (the "district attorney's office") when the county attorney's office received the request for information. We note the county attorney's office is not a party to the pending criminal litigation. Therefore, the county attorney's office 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). The county attorney's office informs us the district attorney's office objects to the release of the remaining 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 submitted information.

Nevertheless, 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 basic information, the county attorney's office

may withhold the remaining information under section 552.103(a) of the Government Code on behalf of the district attorney's office.

However, once the information has been obtained by all parties to the anticipated 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.

In summary, the county attorney's office must withhold the submitted driver's license number and issuing state that do not pertain to the requestor under section 552.130 of the Government Code and the submitted e-mail address of a member of the public that does not pertain to the requestor under section 552.137 of the Government Code, but must release the remaining information we have marked under section 552.022(a)(17) of the Government Code. With the exception of basic information, which the county attorney's office must also release, the county attorney's office may withhold the remaining information under section 552.103(a) of the Government Code on behalf of the district attorney's office.

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/be

Ref: ID# 948018

Enc. Submitted documents

c: Requestor
(w/o enclosures)