



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 25, 2022

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

OR2022-21801

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# 961578.

The Chambers County Attorney's Office (the "county attorney's office") received three requests from two different requestors for information pertaining to a specified incident involving the requestors. The county attorney's office claims the submitted information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the claimed exception 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.

...

¹ The county attorney's office sought and received clarification of the information requested in one of the requests. 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).

(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 county attorney's office 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 requests 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 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 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, which must be released, the county attorney's office may withhold the submitted 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 pending 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.

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,

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/be

Ref: ID# 961578

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)