



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1997

Ms. Amy Whitt
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR97-1468

Dear Ms. Whitt:

You seek reconsideration of Open Records Letter No. 97-0846 (1997), in which this office determined that because the City of Lubbock (the "city") failed to submit to this office a copy of specific information requested, such information was presumed to be public under section 552.303(e) of the Government Code in the absence of a compelling demonstration to overcome the presumption of openness. We have assigned your request for reconsideration ID# 107043.

In support of your request for reconsideration, you have submitted a copy of a receipt from Federal Express which indicates that a package was delivered from the city to this office on February 26, 1997, bringing it within the seven day requirement of section 552.303(d). On this basis, we agree to consider the exceptions you raise for withholding the requested information.

The city received a request for information relating to the maintenance and operation of the radar systems used by the Lubbock Police Department to calculate the speeds of motorists. You assert that the requested information is excepted from disclosure pursuant to sections 552.103 and 552.108 of the Government Code. We have considered your arguments and reviewed the information submitted.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the governing body is or may be a party. The city 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, and (2) the information at issue is related to that litigation. *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 (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

We note that the requestor seeks the information for use in a jury trial to challenge the validity of a speeding ticket he received from a Lubbock police officer. In his request letter to the city, the requestor states that "I am set for trial docket hearing on February 3, 1997." You state, however, that "the information requested is directly relevant to the central issue of *pending* litigation." (Emphasis added). Assuming that litigation is in fact still pending in this matter, we conclude that the requested information relates to that litigation and therefore may be withheld from disclosure pursuant to section 552.103(a).¹ We note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). In addition, when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 107043

Enclosures: Submitted documents

cc: Mr. John P. Oakley
5403 14th Street
Lubbock, Texas 79457
(w/o enclosures)

¹Because we resolve your request under section 552.103(a), we need not address your argument under section 552.108.