



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 19, 1997

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR97-1855

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 108131.

The Texas Department of Public Safety ("DPS") received a request for information relating to a speeding ticket that was issued to the requestor. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. You have submitted a representative sample of the requested information for our review.¹

Section 552.108 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," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We believe that the bulk of the requested information is "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution

¹In reaching our conclusion here, we assume that 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 letter does not reach and, therefore, does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

of crime.” However, this office has determined that section 552.108 does not protect general personnel information from public disclosure. Open Records Decision No. 562 (1990) at 10 (applying predecessor statute). Thus, section 552.108 does not apply to the requested employment and training records. We therefore conclude that, with the exception of the employment and training records, section 552.108 of the Government Code excepts the requested records from required public disclosure.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, 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; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

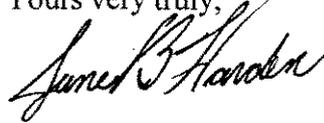
To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information “relates” to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong 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 (Tex. App.—Houston [1st Dist.] 1984, writ ref’d n.r.e.). In this instance, we conclude that the department has shown the applicability of section 552.103 to the records. Thus, the department may withhold the personnel files from the public based on section 552.103.

Generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. 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).

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 on as a previous

determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/alg

Ref: ID# 108131

Enclosures: Submitted documents

cc: Mr. Robert Grimes
Rural Route 1, Box 6920
Antlers, Oklahoma 74523
(w/o enclosures)

