



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 21, 1998

Mr. Carl Bovey
Brown McCarroll Sheets & Crossfield, L.L.P.
309 E. Main Street
Round Rock, Texas 78664-8986

OR98-3229

Dear Mr. Bovey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 120524.

The City of Round Rock (the "city") received a request for the number of patrol officers employed by the police department, the average number of tickets written per month, the total dollar amount of all traffic tickets written in the past twelve months, and the employment of Officer Kyle Haas.

You contend that this information is excepted from public disclosure pursuant to section 552.103(a) of the Government Code. You also contend that some of the requested information would require the city to compile or assemble new information. You submit to this office information you seek to withhold concerning Officer Haas. We have considered the exception you claim and have reviewed the documents at issue. This ruling is limited to the submitted information and to information that the city would be required to prepare.¹

First, you state that the request for the average number of traffic tickets and the dollar amount of all tickets would require the city to create new information. A governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 (1982). However, a governmental body need not prepare new information in response to a request. ORD 452 (1986).

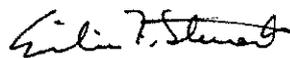
When asserting section 552.103(a), a governmental body must establish that

¹We note that if the city has responsive information other than that submitted to this office, we assume it has been provided to the requestor.

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation.² Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation to which the governmental body is a party is either pending or reasonably anticipated, and (2) the requested information relates to that litigation. See *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex.App.--Austin 1997, no pet.); *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). You state that the request covers information that is related to litigation pending in Cause No. 13855-97. In this instance, the city has met its burden of showing that the litigation is pending and that the requested information submitted to this office relates to that litigation. Therefore, at this time, you may withhold the requested information submitted to this office. In reaching this conclusion, however, we assume that the opposing party to the pending litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also 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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

²Section 552.103(a) excepts from required public disclosure 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.

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Ref: ID# 120524

Enclosures: Submitted documents

cc: Ms. Karen Faltynek
P.O Box 475
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(w/o enclosures)