



June 25, 1999

Mr. James J. Savage
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR99-1776

Dear Mr. Savage:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125504.

The Harris County Constable's Office for Precinct 1 (the "county") received a request for several categories of information concerning a deceased officer, including employment and training records. The requestor also seeks the "standard operation procedures regarding vehicular traffic stops, investigations, and arrest." You claim that the requested information is excepted from required public disclosure by sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted documents.

The purpose of section 552.103 is to protect a governmental body's position in litigation by forcing parties to obtain information relating to the litigation through the discovery process. Open Records Decision No. 551 (1990). A governmental body that is a party to pending litigation has discretion to determine whether it should claim section 552.103 for information related to the litigation. *See id.*; Open Records Decision No. 511 (1988). You claim that the deceased officer's personnel file is related to a pending criminal prosecution and should, therefore, be excepted from disclosure under section 552.103. The county, however, is not a party to this litigation. Consequently, the county has no section 552.103 interest in information related to the litigation. *See* Open Records Decision No. 392 (1983).

In this type of situation, we require an affirmative representation from the prosecuting attorney representing the State of Texas in the litigation that he or she wants the requested information withheld from disclosure under section 552.103. You have provided us with an affidavit from the district attorney requesting that the county withhold the personnel information from disclosure under section 552.103. Therefore, we will consider your section 552.103 claim.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *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 personnel information relates to criminal proceedings that are pending against an individual who has been indicted for capital murder. We presume from your arguments that the individual is being prosecuted for the murder of the deceased officer. We have reviewed personnel information and agree that the information is related to the pending litigation for the purposes of section 552.103. Therefore, the county may withhold the officer's personnel file from disclosure under section 552.103(a) on behalf of the district attorney.¹

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

¹We note that once all parties to litigation have gained access to the information at issue, through discovery or otherwise, section 552.103(a) is no longer applicable. Open Records Decisions Nos. 551 (1990), 454 (1986). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

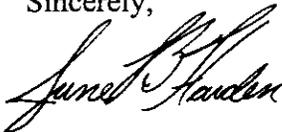
* * *

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the procedures relating to vehicular stops, investigations, and arrest are also related to the ongoing criminal prosecution. You also argue that, in this instance, release of these procedures would endanger the lives of law enforcement officers. We find that you have shown that the release of the operating procedures would interfere with the detection, investigation or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). Thus, we conclude that the procedures relating to vehicular stops, investigations and arrest may be withheld under section 552.108(a)(1).

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.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH\ch

Ref.: ID# 125504

Encl. Submitted documents

cc: Mr. John Castillo
Castillo Investigation Specialist, C.I.S.
P.O. Box 1082
Spring, Texas 77383-1082
(w/o enclosures)