



August 2, 2000

Ms. Sarajane Milligan
Assistant County Attorney
County of Harris
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2000-2916

Dear Ms. Milligan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act. Your request was assigned ID# 137732.

The Harris County Attorney (the "county attorney") received a request for eleven categories of information relating to, among other things, work performed by and complaints against two named county attorneys (items 1 and 2), time and resources expended by the county relating to litigation involving the requestor and his spouse (items 8 and 9), and lists of all employees of the county attorney who have made campaign contributions from July 1, 1999, to the present, including details of those contributions (items 10 and 11). You have released information responsive to items 3, 4a, 4b, 6, and 7. You state that no documents exist which are responsive to items 2, 5a, and 5b. You further state that "there are no documents maintained by the County Attorney that contain the information requested in items 8, 10, and 11." Assuming this last statement to mean that the county attorney does not have any information responsive to those items, we are left to consider only items 1 and 9. You claim that those items are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

¹We 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). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

Item 1 seeks itemizations of time spent and actions taken by two named county attorneys, allocated to individual cases, between July 1, 1999, and May 15, 2000. Item 9 seeks time sheets itemizing time and resources spent "by any Harris County employee with regards to any litigation involving [named parties] between July 1, 1999 and the present date." You claim that the responsive information is excepted from required disclosure by section 552.103 of the Government Code. Section 552.103 provides in pertinent part:

(a) Information is excepted from the requirements of [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.

(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.

The county attorney 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 at 4 (1990). The county attorney must meet both prongs of this test for information to be excepted under section 552.103(a). You have demonstrated that the county has been sued for false arrest, false imprisonment, use of excessive force, and libel as a result of a traffic stop. On reviewing the submitted documents, we find that they relate to the pending litigation.

The county attorney may withhold the submitted information under section 552.103. However, 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).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 137732

Encl. Submitted documents

cc: Mr. John Beard
20711 Teal Point Drive
Katy, Texas 77450
(w/o enclosures)