



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 12, 2009

Mr. Marc J. Schnall  
Langley & Banack  
Trinity Plaza II  
745 East Mulberry, Suite 900  
San Antonio, Texas 78212-3166

OR2009-03230

Dear Mr. Schnall:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 337616.

The City of Selma (the "city"), which you represent, received a request for five categories of information, specifically (1) the radar training certificate for a particular officer, (2) the radar calibration records for a particular officer, (3) the radar calibration records for the named officer's tuning fork, (4) the city's police department's FCC license for radar guns, and (5) information related to a traffic and engineering survey done at a particular location. You state the city does not have information responsive to categories 1, 4, and 5. The Act does not require a governmental body to disclose information that did not exist at the time the request was received or to create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.— San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides as follows:

- (a) Information is excepted from [required 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.

Gov't Code § 552.103(a), (c). The city has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is showing (1) litigation is pending or reasonably anticipated on the date the governmental body received the request, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. 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). The city must meet both prongs of this test for information to be excepted under section 552.103(a).

You state you have been advised by the City Administrator that a municipal court hearing is scheduled for January 13, 2009, in which the requestor will be prosecuted by the city for the offense of speeding, and information as to the radar unit is related to this pending litigation. We therefore agree litigation was pending when the city received the request. Furthermore, upon review, we conclude the submitted radar gun calibration certificates are related to the pending litigation. *See* ORD 551 at 5 (attorney general will determine whether governmental body has reasonably established information at issue is related to litigation). Accordingly, the city may withhold the submitted information under section 552.103 of the Government Code.<sup>1</sup>

We note, however, 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). Further, the applicability of section 552.103(a) ends once the litigation has concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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<sup>1</sup>As our ruling on this issue is dispositive, we need not address your remaining argument.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Emily Sitton  
Assistant Attorney General  
Open Records Division

EBS/eeg

Ref: ID# 337616

Enc. Submitted documents

c: Requestor  
(w/o enclosures)