



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2009

Ms. Melanie Barton
Assistant District Attorney
Dallas County
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2009-06720

Dear Ms. Barton:

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# 343398.

The Dallas County Constable, Precinct 4 (the "constable") received a request for sixteen categories of information relating to a traffic citation received by the requestor, including a traffic and engineering survey done at a particular location, location of traffic signs, various training and administrative records of a named constable, and information regarding the laser radar gun used in connection with the citation at issue. You state the constable does not have information responsive to ten categories of the request.¹ You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides:

- (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

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

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). A governmental body 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 a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *See University 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You argue that the submitted information pertains to a criminal case pending in the Justice of the Peace Court, Precinct 4-1, in Dallas County. We note, however, that the constable is not a party to this litigation. In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. You indicate that the Dallas County District Attorney's Office (the "district attorney") requests that the information at issue be withheld under section 552.103 to protect the district attorney's interest in the pending case. Based on this assertion and our review of the submitted indictment, we find that the district attorney has a litigation interest in the pending case. *See* Open Records Decision Nos. 586 (1991), 469 (1987) (university may withhold information under section 552.103 predecessor to protect district attorney's interest in anticipated criminal litigation), 289 (1981) (where records pertaining to criminal litigation are held by both governmental body and prosecutor, demonstration that prosecutor asks that those records not be released triggers litigation exception). We also find that the litigation was pending before the date of the present request and that the submitted information relates to the pending litigation. Accordingly, we find that section 552.103 of the Government Code is applicable to the submitted information and the constable may withhold it on that basis.

We note, however, that once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus,

any submitted information that has either been obtained from or provided to all other parties in the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

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, 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,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/jb

Ref: ID# 343398

Enc. Submitted documents

c: Requestor
(w/o enclosures)