



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 1, 2009

Ms. Evelyn Njuguna  
Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 368  
Houston, Texas 77001-0368

OR2009-07411

Dear Ms. Njuguna:

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# 344606.

The City of Houston (the "city") received a request for all dispatch communications made or received by three named police officers on or about two specified dates. 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 provides in part:

- (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 a showing that (1) litigation is pending or reasonably anticipated, 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, and provide documentation showing, that prior to the city's receipt of the present request for information the requestor filed a lawsuit against the officers at issue. You state that the litigation is still pending. Based on your representations and our review of the submitted information, we conclude that litigation was pending when the city received the present request. We also agree that the submitted information is related to the litigation for purposes of section 552.103.

We note, however, that information normally found on the front page of an offense report is generally considered public, and must be released. *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.); see Open Records Decision No. 127 (1976). In Open Records Decision No. 597 (1991), this office concluded that basic information may not be withheld under the statutory predecessor to section 552.103. ORD 597 at 3. In Open Records Decision No. 649 at 3 (1996), this office further concluded that information contained in a police dispatch record is substantially the same as basic information and is generally not excepted from public disclosure. See also Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in police dispatch records or radio logs and front page offense report information expressly held to be public in *Houston Chronicle*, and thus, such information is generally public). Thus, the city may withhold the submitted audio recordings under section 552.103 of the Government Code. However, the remaining information, consisting of police dispatch records, constitutes basic information for purposes of section 552.103, and must be released to the requestor.

We note 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). 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](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,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/dls

Ref: ID# 344606

Enc: Submitted documents

c: Requestor  
(w/o enclosures)