



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2010

Mr. Robert E. Hager
Nichols, Jackson, Dillard, Hager, & Smith, LLP
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2010-07756

Dear Mr. Hager:

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# 380780 (Ref. # 42662.7).

The City of Lancaster (the "city"), which you represent, received a request for the dash cam video, officer training records, and calibration records for specified equipment related to a specified incident. You state you have released some of the requested information. You claim portions of the submitted information are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have redacted portions of the submitted information, which you state you have released. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), .301(e)(1)(D). The previous determination issued in Open Records Decision No. 684 (2009) authorizes a governmental body to withhold a Texas driver's license number under section 552.130 of the Government Code without the necessity of requesting a decision from this office. However, you do not assert, nor does our review of our records indicate, you have been authorized to withhold any of the remaining redacted information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open

Records Decision No. 673 (2000). As such, these types of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information. Because you do not provide any arguments for withholding the remaining redacted information, and as we are not aware of any statute that makes this information confidential, the city must release such information.

You seek to withhold Exhibit B under section 552.103 of the Government Code. Section 552.103 provides, in relevant 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). A governmental body has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation is pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to that litigation. *See 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.); ORD 551 at 4 (1990). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103.

You state the information at issue relates to a municipal court hearing in which the individual at issue will be prosecuted by the city for the offense of speeding. You indicate the charges were filed prior to the date the request for information was made. We therefore agree litigation to which the city is a party was pending on the date the city received the request. We further find the information at issue relates to the pending litigation. Therefore, the city may withhold the submitted dash camera video and calibration record for equipment under section 552.103 of the Government Code.

Generally, 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). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a). Further, 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 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, toll free at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jb

Ref: ID# 380780

Enc. Submitted documents

c: Requestor
(w/o enclosures)