



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2011

Ms. Dara Crabtree
City Secretary
City of Duncanville
P.O. Box 380280
Duncanville, Texas 75138-0280

OR2011-12250

Dear Ms. Crabtree:

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# 428457.

The City of Duncanville (the "city") received a request for the number of traffic violations, number of accidents, number of fatalities, and amount of total revenue collected for traffic violations at a specified intersection during a specified period of time. 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 representative sample of information.

Initially, we note the city only submitted information responsive to the number of traffic violations and amount of revenue collected for traffic violations. Although you state the city submitted a representative sample of information, no portion of the submitted representative sample pertains to the number of accidents or the number of fatalities. Thus, we find the submitted information is not representative of the information sought in these portions of the request. Please be advised this open records letter applies to only the types of information you have submitted for our review. Therefore, this opinion does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See Gov't Code § 552.302* (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). Because you have not submitted information responsive to these portions of the request for our review, we assume

you have released it to the extent it exists. *See id.* §§ 552.301, .302. If you have not released this information, you must do so at this time. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.103 of the Government Code 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). The governmental body 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 on the date the governmental body received the request for information 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 governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, that litigation is pending against the requestor in the city's municipal court for an alleged traffic violation at the intersection specified in the request. Based upon your representations and our review, we agree litigation to which the city is a party was pending on the date the city received the present request. Furthermore, we find that the submitted information is related to the pending litigation. Thus, the city may withhold the submitted information under section 552.103 of the Government Code.

We note, however, once information has been obtained by all parties to the pending 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 pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further,

the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eb

Ref: ID# 428457

Enc. Submitted documents

c: Requestor
(w/o enclosures)