



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2011

Mr. Brad Young
Bickerstaff, Heath, Delgado, Acosta, L.L.P.
3711 S. Mopac Expressway
Building One, Suite 300
Austin, Texas 78746

OR2011-13711A

Dear Mr. Young:

This office issued Open Records Letter No. 2011-13711 (2011) on September 22, 2011. Since that date, you have provided new information that affects the facts on which that ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on September 22, 2011. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act")).

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# 437679.

The Bee Cave Police Department (the "department"), which you represent, received a request for a named officer's daily log for a specified date, the named officer's radar log for the same date, copies of maintenance and/or certification records for the last twelve months of the radar used to ascertain the speed of the requestor's vehicle, and a copy of a specified Federal Communications Commission license. You claim 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 in part 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. The department 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 department must meet both prongs of this test for information to be excepted under section 552.103(a).

You represent to this office the submitted information relates to a criminal prosecution that was pending when the department received this request for information. We note, however, the department is not a party to the pending criminal litigation. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990). 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. In this instance, you state, as the prosecutor for the City of Bee Cave, that you wish to withhold the submitted information under section 552.103. Based on this representation and our review of the submitted information, we agree that litigation was pending as of the date the request was received. Furthermore, we find the submitted information relates to the pending litigation. Accordingly, the department generally may withhold the submitted information under section 552.103.

However, once the information at issue has been obtained by all parties to the 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, 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 437679

Enc. Submitted documents

c: Requestor
(w/o enclosures)