



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 29, 2011

Ms. Kimberly R. Lafferty  
For City of Gunter  
Lafferty & Slayton, P.L.L.C.  
10000 North Central Expressway, Suite 400  
Dallas, Texas 75231

OR2011-17580

Dear Ms. Lafferty:

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# 437216.

The City of Gunter (the "city"), which you represent, received a request for a video recording of a traffic stop involving a named individual. 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:

(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.

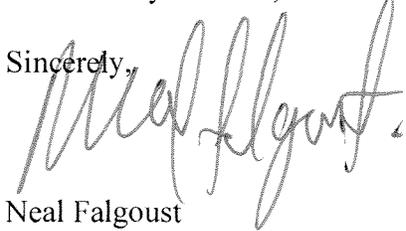
Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular

situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated 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 argue the submitted information is excepted from disclosure on the basis that the city is involved in pending litigation related to this traffic stop. You provide a notice of a pre-trial setting to support your arguments. However, upon review, we find the city received the request for information on August 16, 2011, and the notice was signed on August 22, 2011. Thus, the city has failed to demonstrate litigation was pending on the date the city received the request. Therefore, the city may not withhold the submitted information under section 552.103 of the Government Code. As you raise no other exceptions to disclosure, the submitted information must be released.

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, toll free at (888) 672-6787.

Sincerely,



Neal Falgout  
Assistant Attorney General  
Open Records Division

NF/agn

Ref: ID# 437216

Enc. Submitted documents

c: Requestor  
(w/o enclosures)