



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 18, 1997

Mr. David M. Douglas
Assistant Chief, Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR97-2792

Dear Mr. Douglas:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111167.

The Texas Department of Public Safety (the "department") received a request for information related to a speeding citation, including information concerning radar equipment and the personnel files of the issuing officer and his supervisor. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. You have submitted a representative sample of the requested information for our review.¹

Section 552.108 provides in part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

You inform this office that the requestor is "currently fighting the speeding ticket in court. A speeding violation is a Class C misdemeanor, Section 542.401, Texas Transportation Code." In addition, you represent that the assistant county attorney for Midland County, who is representing the state in the matter of the speeding violation, has asked that the requested information be withheld. We find that some of the requested information relates to a pending criminal prosecution, and it is therefore excepted from disclosure under section 552.108(a)(1).

We note, however, that "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See generally 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. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976).²

Moreover, this office has determined that section 552.108 does not protect general personnel information from public disclosure. Open Records Decision No. 562 (1990) at 10 (applying predecessor statute). We therefore conclude that, with the exception of the basic information and the personnel records, section 552.108(a)(1) of the Government Code excepts the requested records from required public disclosure because release of this information would interfere with the detection, investigation, or prosecution of crime.

You also raise an exception under section 552.103 of the Government Code. Section 552.103(a) reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, 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; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

²Basic information in an offense report generally may not be withheld under section 552.103. Open Records Decision No. 597 (1991).

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex.App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). In this instance, we conclude that the department has shown the applicability of section 552.103 to the requested personnel records. Thus, the department may withhold the requested personnel records from public disclosure based on section 552.103.

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), and it must be disclosed. In addition, 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).³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/ glg

Ref.: ID# 111167

Enclosures: Submitted documents

³We note, however, that some of the information submitted to this office for review is deemed confidential by statute, the release of which may constitute a criminal offense. See Gov't Code §§ 552.117 and 552.352.

cc: Mr. Phillip Crumley
906 E. 52nd Street
Lubbock, Texas 79404
(w/o enclosures)