



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 23, 1998

Mr. Ron Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR98-0515

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112892.

The Texas Department of Public Safety (the "department") received a request for fifteen categories of 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 of the Government Code provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an

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.

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 for criminal litigation;

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

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

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

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You inform this office that criminal charges are pending against the requestor for an alleged speeding violation. You also state that the assistant district attorney for Van Zandt County, who is representing the state in the matter of the speeding violation, has asked that the requested information be withheld. You have stressed this point in several letters to this office. We find that some of the requested information relates to a pending criminal prosecution; therefore, it is excepted from disclosure under section 552.108(a)(1). *See* Open Records Decision No. 216 (1978).

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

Additionally, 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 you have shown that release of this information would interfere with the detection, investigation, or prosecution of crime.

You also raise section 552.103 of the Government Code. Section 552.103(a) excepts from disclosure 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.

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.*). Based your arguments, we conclude that the department has shown the applicability of section 552.103 to the requested personnel records. *Cf.* Open Records Decision 586 (1991) (need of another governmental body to withhold the information may provide a compelling reason for nondisclosure). Thus, the

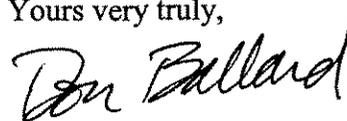
²Basic information in an offense report generally may not be withheld under section 552.103. *See Houston Chronicle*, 531 S.W.2d at 187; *cf.* Open Records Decision No. 597 (1991).

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 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).

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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 112892

Enclosures: Submitted documents

cc: Ms. Jackie Lee Dyson
4394 Turner Road
Mulberry, Florida 33860
(w/o enclosures)