



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 26, 1998

Ms. Kristi A. Taylor  
Assistant City Attorney  
Neiman & Barnes, L.L.P.  
P.O. Box 777  
Lewisville, Texas 75067

OR98-1297

Dear Ms. Taylor:

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# 115641.

The Sanger Police Department (the "department") received an open records request<sup>1</sup> for certain records in connection with a speeding citation issued by the department. You first contend that records pertaining to the use and maintenance of radar equipment may be withheld from the public pursuant sections 552.103 and 552.108 of the Government Code. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103. The records pertaining to the radar equipment therefore may be withheld pursuant to section 552.103.<sup>2</sup>

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<sup>1</sup>The City of Sanger also received a "Request for Production" in connection with the traffic offense. This ruling does not address whether the records at issue must be produced during the discovery process.

<sup>2</sup>Because we resolve this aspect of your request under section 552.103, we need not address the applicability of section 552.108 to these particular records. In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Citing Open Records Decision No. 562 (1990) as authority, you suggest that the personnel files of the police officer that issued the traffic citation and of that officer's supervisor come under the protection of section 143.089 of the Local Government Code. Please note, however, that chapter 143 of the Local Government Code applies only to those municipalities that meet the requirements as specified in section 143.002. Accordingly, section 143.089 is not applicable to records held by the Sanger Police Department.

You also contend that the release of the requested personnel files "would unduly interfere with the prosecution of this case." It is not apparent to this office whether you intended to raise either section 552.103 or 552.108 or both with regard to this information. You have not explained, however, nor is it apparent to this office, how either of these exceptions apply. We therefore conclude that you have not met your burden in establishing the applicability of either of these exceptions. The department therefore must release the personnel files to the requestor.

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,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/RWP/ch

Ref.: ID# 115641

Enclosures: Submitted documents

cc: Mr. James R. Foutch  
214 Fieldlark Lane  
Sanger, Texas 76266  
(w/o enclosures)