

January 28, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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JOHN CORNYN
Attorney General

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P.O. Box 12548
Austin, Texas
78711-2548

(512) 463-2100
www.oag.state.tx.us

Mr. C. Scott Brumley
Assistant County Attorney
Civil Division
Office of the County Attorney
Potter County, Texas
500 S. Fillmore, Room 303
Amarillo, Texas 79101

OR99-0265

Dear Mr. Brumley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 121793.

The Potter County Sheriff's Office (the "county") received a request for the employment records of a deputy sheriff of Potter County, including "employment applications, promotions, awards, training, reprimands, complaints, disciplinary actions, qualifications, educational background, and other information relating to this individual." You submitted to this office the requested information, the indictment in Cause No. 39260-E and an entry of appearance by the requestor as defendant's counsel in Cause No. 39260-E. You seek to withhold the requested information under sections 552.103(a) and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

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.

The county 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, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas 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 county must meet both prongs of this test for information to be excepted under 552.103(a).

We now examine whether the requested information is related to the pending litigation. "Ordinarily, the words 'related to' mean 'pertaining to,' 'associated with' or 'connected with.'" *Texas Legal Found.*, 958 S.W.2d at 483. You contend that

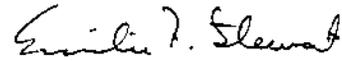
"Since Deputy . . . is the complainant in the criminal case which seems to be the genesis of this request, it cannot be reasonably disputed that his personal and employment information, which could be used *inter alia* to impeach his testimony at trial of the underlying criminal case, relates to the criminal litigation."

In this instance, you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). In reaching this conclusion, however, we assume that the opposing party to the anticipated 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(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that 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).

Because we make a determination under section 552.103, we do not address your additional arguments against disclosure. We note, however, that some of the requested information may be confidential by law and must not be released even after litigation has concluded. If you receive a subsequent request for the information, you should re-assert your arguments against disclosure at that time. Gov't Code § 552.352 (distribution of confidential information is criminal offense).

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,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 121793

Enclosures: Submitted documents

cc: Mr. Charles L. Rittenberry
724 South Polk Street, Suite 500
Amarillo, Texas 79101
(w/o enclosures)