



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2009

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 368
Houston, Texas 77001-0368

OR2009-05754

Dear Ms. De La Garza:

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# 341516.

The Houston Police Department (the "department") received a request for information pertaining to a specified arrest and prosecution. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that the submitted information may be withheld in its entirety pursuant to section 552.103 of the Government Code. Section 552.103 provides in relevant part as follows:

- (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.

Gov't Code § 552.103(a). The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See id.* § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). You inform us that the submitted information relates to a pending criminal appeal. We note that the department is not a party to the appellate proceeding and therefore does not have a litigation interest in the matter for

purposes of section 552.103. In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. You have submitted an affidavit from the Harris County District Attorney's Office (the "district attorney") that states the information at issue pertains to a pending habeas corpus proceeding. The district attorney states that the release of information related to the criminal prosecution at issue could interfere with the district attorney's prosecution of the criminal case. Based on these representations and our review, we agree litigation was pending as of the date the request was received. We further find the information at issue relates to the pending litigation. Accordingly, the department may withhold the submitted information pursuant to section 552.103 of the Government Code.¹

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 all other parties in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded or is no longer realistically anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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, 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 at (512) 475-2497.

Sincerely,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/dls

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 341516

Enc. Submitted documents

c: Requestor
(w/o enclosures)