



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2009

Mr. Joel K.B. Winful
Assistant District Attorney
Civil Division
Dallas County Administration Building
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2009-07900

Dear Mr. Winful:

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# 345427.

Dallas County Constable Precinct 4 (the "county") received a request for (1) e-mails between twelve named individuals and (2) e-mails referencing a named individual, the news or media, or the requestor, between June 13 and June 30, 2008, July through October 2008, and November 14 through November 20, 2008. You claim the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.103 of the Government Code provides 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

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

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.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You inform us a deputy constable received a disciplinary suspension in 2008. You also inform us the deputy constable has appealed the disciplinary suspension to the county civil service commission (the "commission") and the appeal is still pending. We note the county has adopted chapter 158 of the Local Government Code, which authorizes and establishes the parameters for the creation of the commission. The commission handles civil service grievance actions, such as the one the deputy constable has filed. This office has held "litigation" within the meaning of section 552.103 includes contested cases conducted in a quasi-judicial forum. *See, e.g.*, Open Records Decision Nos. 474 (1987), 368 (1983), 301 (1982). For instance, this office has held cases conducted under the Texas Administrative Procedure Act, chapter 2001 of the Government Code, constitute "litigation" for purposes of section 552.103. *See, e.g.*, Open Records Decision Nos. 588 (1991) (proceeding of former State Board of Insurance), 301 (1982) (proceeding of Public Utilities Commission). In determining whether an administrative proceeding is conducted in a quasi-judicial forum, this office has considered the following factors: 1) whether the dispute is, for all practical purposes, litigated in an administrative proceeding where a) discovery takes place, b) evidence is heard, c) factual questions are resolved, d) a record is made; and 2) whether the proceeding is an adjudicative forum of first jurisdiction, *i.e.*, whether judicial review of the proceeding in district court is an appellate review and not the forum for resolving a controversy on the basis of evidence. *See* Open Records Decision No. 588 (1991).

You have not submitted any rules regarding the county's grievance process and have not provided us with evidence to show the county's grievance process is conducted in a quasi-judicial forum. Because the county has failed to show the proceeding at issue constitutes litigation for purposes of section 552.103, the county may not withhold the information under section 552.103.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information that the governmental body seeks to withhold. *See* Gov't Code § 552.301(e)(1)(A). You raise section 552.108(a)(2) and state the submitted information contains extensive information regarding numerous criminal violations. You also state it pertains to a continuing investigation. Thus, we conclude you have failed to demonstrate the submitted information relates to a concluded investigation or prosecution that did not result in conviction or deferred adjudication. Accordingly, the county may not withhold the submitted information under section 552.108(a)(2) of the Government Code.

We note the submitted information includes e-mail addresses subject to section 552.137 of the Government Code, which excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).² *Id.* § 552.137(a)-(c). The e-mail addresses in the submitted information are not specifically excluded by section 552.137(c). The county must withhold these e-mail addresses, which we have marked, under section 552.137, unless the owners of the addresses have affirmatively consented to their release.

We note a portion of the remaining information contains information subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a Texas motor vehicle title or registration. *Id.* § 552.130(a)(2). The county must withhold the Texas motor vehicle record information we have marked under section 552.130.

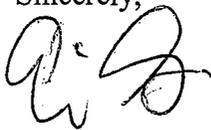
In summary, the county must withhold the information we have marked under sections (1) 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release, and (2) 552.130 of the Government Code. The remaining information must be released.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/rl

Ref: ID# 345427

Enc. Submitted documents

c: Requestor
(w/o enclosures)