



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2009

Ms. Christina R. Sanchez
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2009-09356

Dear Ms. Sanchez:

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# 348460.

The El Paso County Sheriff's Office (the "sheriff") received a request for information related to a specified arrest. We understand you have released some of the requested information to the requestor. You claim that the submitted 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 information.

You assert that the submitted information is excepted from disclosure under section 552.103 of the Government Code, which provides in 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 state, and provide documentation demonstrating, that the submitted information relates to pending litigation. We note, however, that the sheriff is not a party to this litigation and therefore does not have a litigation interest in the matter for purposes of 552.103. *See Gov't Code* § 552.103(a); Open Records Decision No. 575 at 2 (1990) (stating that predecessor to section 552.103 only

applies when governmental body is party to litigation). 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 a letter from the District Attorney for the 34th Judicial District which states that the information pertains to pending civil asset forfeiture case. The letter also states that requested information constitutes "evidence provided by witnesses, law enforcement reports, photographs, and other information related to the pending lawsuit." Based on these representations and our review of the submitted information, we agree that litigation was pending as of the date the request was received. We further find that the information at issue relates to the pending litigation. Accordingly, the sheriff may withhold the submitted information pursuant to section 552.103 of the Government Code.¹

We note, however, that once the information has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information that has either been obtained from or provided to all other parties in the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/eeg

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

Ref: ID# 348460

Enc. Submitted documents

c: Requestor
(w/o enclosures)