



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 24, 2009

Ms. Michelle T. Rangel  
Assistant County Attorney  
Fort Bend County  
301 Jackson Street, Suite 728  
Richmond, Texas 77469

OR2009-11870

Dear Ms. Rangel:

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# 353275.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for information relating to the sheriff's use of bloodhounds, including records of incidents involving a named bloodhound handler, scent line-ups, veterinary records, training records, and billing information for cases in which the named handler was loaned to outside agencies. You state you have released some of the responsive information. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note Exhibit F falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(3) provides for required public disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(3). Exhibit F consists of information in a voucher relating to the receipt of public funds. You claim this information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 is a discretionary exception that protects a governmental body's interests and is therefore not "other law" for purposes of

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<sup>1</sup>We 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.

section 552.022(a)(3). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). Therefore, the information subject to section 552.022(a)(3) may not be withheld under section 552.103. As you claim no further exceptions for this information, it must be released.

We now address your claim under section 552.103 of the Government Code for the information that is not subject to section 552.022. 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 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). The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See Open Records Decision No. 551 at 4-5 (1990)*. 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 that (1) litigation was pending or reasonably anticipated on the date that 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 state, and have provided documentation showing, that prior to the sheriff's receipt of this request, two civil lawsuits were pending in the United States District Court for the Southern District of Texas, Victoria Division. Fort Bend County and a named sheriff's deputy are defendants in these lawsuits, styled *Buchanek vs. City of Victoria*, Cause No. 6:08-cv-8 and *Calvin Lee Miller vs. City of Yoakum*, Cause No. 6:09-cv-00035. You state both lawsuits are pending. Thus, based on your representations and our review, we find

litigation was pending on the date the sheriff received the request for information. The information not subject to section 552.022 relates to the training and use of the bloodhounds, which is an issue central to both pending lawsuits. Therefore, we find the information relates to the pending litigation. Accordingly, the sheriff may withhold the information not subject to section 552.022 pursuant to section 552.103 of the Government Code.<sup>2</sup>

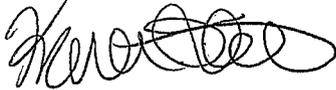
Once information has been obtained by all parties to both lawsuits, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties in both pending lawsuits 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. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the sheriff may withhold the information not subject to section 552.022 under section 552.103 of the Government Code until the information has been obtained by all parties to both pending lawsuits or the litigation has been concluded. The remaining information must be released.

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](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,



Karen E. Stack  
Assistant Attorney General  
Open Records Division

KES/eb

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Ref: ID# 353275

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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