



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 12, 2011

Mr. Michael M. Kelly  
Assistant District Attorney  
Victoria County District Attorney  
205 North Bridge Street, Suite 301  
Victoria, Texas 77901

OR2011-00621

Dear Mr. Kelly:

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# 405756.

The Victoria County Sheriff's Office (the "sheriff") received a request for offense reports, incident reports, dispatch call notes, and 9-1-1 recordings for sheriff responses to calls at a specified address during a specified period. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.103 of the Government Code provides in part:

- (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.

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

...

(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 sheriff 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 on the date the department 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). The sheriff must meet both prongs of this test for information to be excepted under section 552.103(a). *See id.*

The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See* Gov't Code § 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). In this instance, you explain there is a pending civil case between the requestor's client and his wife in District Court that concerns child support arrangements. You also state that there are currently three separate criminal cases pending against the requestor's client in the Victoria County Courts at Law. However, you do not explain how the sheriff is a party to these pending litigations. In such a situation, we require an affirmative representation from a governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. You have provided no such representation. Thus, we find the sheriff failed to demonstrate the applicability of section 552.103 of the Government Code to the submitted information, and no information may be withheld on that basis. As you raise no other exceptions to disclosure, the submitted 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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Davis", with a long, sweeping tail extending to the right.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tf

Ref: ID# 405756

Enc. Submitted documents

c: Requestor  
(w/o enclosures)