



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2011

Mr. Flint Matzke
Assistant County Attorney
Brazos County
300 East 26th Street, Suite 325
Bryan, Texas 77803

OR2011-01747

Dear Mr. Matzke:

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# 408095.

The Brazos County Constable's Office (the "constable") received a request for the following categories of information: (1) notes, records, and log files made by a named officer pertaining to a specified traffic citation; (2) calibration records for any speed detection equipment used by the named officer in issuing the specified traffic citation; (3) the operator's manual for the speed detection device at issue; (4) Justice of the Peace Precinct 2 regulations, guidelines, and policies pertaining to the use and operation of the speed detection device at issue; (5) engineering reports and studies performed in determining "the posted speed limit," including the "most recent 85th percentile speed measurement and any collision data;" (6) list of traffic tickets issued by the named officer in October 2010; and (7) list of traffic tickets issued by the Justice of the Peace in October 2010, including four specified types of information. You state the constable has released the requested citation. You state the constable does not maintain information responsive to categories three and five. We understand you to assert information responsive to categories four and seven are judicial records governed by the Rules of Judicial Administration of the Texas Supreme Court.¹ You

¹We note that although the Act encompasses information "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business . . . by a governmental body," the Act's definition of "governmental body" "does not include the judiciary." Gov't Code §§ 552.002(a)(1), .003(1)(B). "Information collected, assembled, or maintained by or for the judiciary" is not subject to the Act

claim portions of the submitted information are excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and submit a letter from the Brazos County Attorney’s Office stating, that the submitted information relates to a pending criminal prosecution. Based upon this representation, we conclude that release of most of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note, however, the submitted information includes a copy of a citation. Because a copy of the citation was provided to the individual who was cited, we find release of the citation will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). We therefore conclude the copy of the citation we have marked may not be withheld under section 552.108(a)(1). Accordingly, with the exception of the marked citation, which you state you have released, we conclude the constable may withhold the submitted information under section 552.108(a)(1) of the Government Code.

Next, we address your claim for the citation under section 552.103 of the Government Code, which 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.

...

but instead “is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Id.* § 552.0035(a); *see* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov’t Code § 552.003(1)(B) prior to enactment of Gov’t Code § 552.0035).

(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.

Id. § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

We note that 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 ORD 551 at 4-5.* If the opposing party has seen or had access to information relating to pending or anticipated litigation, through discovery or otherwise, then there is no interest in withholding that information from public disclosure under section 552.103. *See Open Records Decision Nos. 349 (1982), 320 (1982).* In this instance, the citation is related to a pending prosecution. Thus, because the citation was provided to the defendant in the prosecution, the opposing party in the litigation has already seen that information. We therefore conclude that the citation may not be withheld under section 552.103 of the Government Code and must be released.²

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

²We note that the citation being released contains confidential information to which the requestor has a right of access. *See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Thus, if the constable receives another request for this particular information from a different requestor, then the constable should again seek a decision from this office.

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 that reads "Jennifer Luttrall". The signature is written in a cursive, flowing style.

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 408095

Enc. Submitted documents

c: Requestor
(w/o enclosures)