



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 27, 2014

Mr. James T. Jeffrey, Jr.
Law Offices of Jim Jeffrey
2214 Park Springs Boulevard
Arlington, Texas 76013

OR2014-05120

Dear Mr. Jeffrey:

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# 518554.

The Dalworthington Gardens Department of Public Safety (the "department"), which you represent, received a request for: (1) citations issued by a specified officer for the last six months, excluding confidential information; (2) video from a specified police car on a specified date during a specified time period; (3) policies and procedures adhered to by the department's officers, excluding the United States Constitution, United States statutes, and Texas statutes; and (4) documents pertaining to a specified radar gun or laser that relate to its calibration, maintenance, and/or purchase.¹ You state the department will allow inspection of some of the responsive information. 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.

Section 552.103 of the Government Code provides as follows:

¹You state, and provide documentation showing, the department asked for and received clarification of categories one and three of the request. See Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

(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). A governmental body 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 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 state a speeding citation was given to the requestor and litigation was pending in the City of Dalworthington Gardens Municipal Court on the date the request was received. As the department is not a party to the pending litigation, the department does not have a litigation interest in the matter for purposes of section 552.103. In such a situation, we require an affirmative representation from the governmental body whose litigation interests are at stake that it seeks to withhold the information from disclosure under section 552.103, as well as a demonstration of how that exception applies to the requested information. You, as an attorney for the City of Dalworthington Gardens (the "city"), state the information at issue is directly related to the pending litigation and the city wishes to withhold the information. Upon review, we find the submitted DVD, radar document, and Chapter 8 of the department's policy manual, which is entitled "Traffic Stops," are related to the pending litigation for purposes of section 552.103. Accordingly, we conclude the department may withhold the submitted DVD, radar document, and Chapter 8 under section 552.103 of the Government Code on behalf of the city.² However, upon review, we find you have failed to demonstrate how Chapters 2 and 15, which are entitled "Use of Force" and "Emergency

²As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

Services Division,” respectively, are related to the pending litigation. Accordingly, the department may not withhold Chapters 2 and 15 under section 552.103.

We note once information has been obtained by all parties to the anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. See Open Records Decision Nos. 349 (1982), 320 (1982). Further, the applicability of section 552.103(a) ends once the litigation has been concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We also understand you to claim Chapters 2 and 15 are excepted from disclosure under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); see also Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. See, e.g., Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. See, e.g., ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state that release of the information at issue, which includes “descriptions of circumstance and considerations and factors that an [o]fficer should consider before using force and when determining the degree of force to use,” as well as “factors involved in setting up a tactical operation,” would interfere with law enforcement or crime prevention. Based on your representations and our review, we agree the release of some of the information at issue, which we have marked, would interfere with law enforcement or crime prevention. Accordingly, the department may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated how any of the remaining information would interfere with law enforcement

or crime prevention. Accordingly, the department may not withhold any of the remaining information under section 552.108(b)(1).

In summary, the department may withhold the submitted DVD, radar document, and Chapter 8 under section 552.103 of the Government Code on behalf of the city. The department may withhold the information we marked in Chapters 2 and 15 under section 552.108(b)(1) of the Government Code. The department must release the remaining information in Chapters 2 and 15.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Tamara H. Holland".

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ac

Ref: ID# 518554

Enc. Submitted documents

c: Requestor
(w/o enclosures)