



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 2, 2014

Ms. Michele Tapia  
Office of the City Attorney  
City of Carrollton  
1945 East Jackson Road  
Carrollton, Texas 75006

OR2014-09368

Dear Ms. Tapia:

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# 524462 (Carrollton City ID No. 2433).

The City of Carrollton (the "city") received a request for information pertaining to staffing and activities of the Carrollton Police Department's (the "department") investigative and operations divisions and their associated units. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have also received comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments stating why information should or should not be released). We have considered the arguments and reviewed the submitted representative sample of information.<sup>1</sup>

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

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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.

body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the department asserts the responsive information relates to an active criminal matter currently pending in a city municipal court. You further assert the release of the responsive information would “interfere with the prosecution of this matter.” However, we note the submitted information consists of routine personnel breakdowns and charts related to the clearance rates of crimes committed in the city to which the department responded. You do not inform us how the responsive information relates to the matter pending in city municipal court. Furthermore, you do not inform us how the release of this information would interfere with the pending matter. Therefore, we find the city has failed to demonstrate the applicability of section 552.108(a)(1) to the information at issue, and no portion of the information at issue may be withheld on that basis.

Section 552.103 of the Government Code provides, in relevant 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.

...

(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 city 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 of the 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, 481 (Tex. App.—Austin 1997, orig. proceeding); *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 city must meet both prongs of this test for information to be excepted under section 552.103(a).

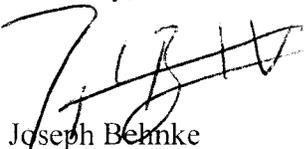
You state, and provide documentation showing, prior to the city’s receipt of the instant request, a lawsuit was filed by the city against the requestor for the requestor’s violation of a traffic law. As such, we agree the city is engaged in pending litigation with the requestor.

However, you do not explain how the responsive information described above is related to the pending litigation. We therefore conclude you failed to establish the applicability of section 552.103 of the Government Code to the responsive information. As such, none of the responsive information may be withheld under section 552.103 of the Government Code. As you raise no other exceptions to disclosure, the responsive 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 524462

Enc. Submitted documents

c: Requestor  
(w/o enclosures)