



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 1, 2014

Mr. Jacob Wedemeyer  
Assistant County Attorney  
County of El Paso  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2014-11333

Dear Mr. Wedemeyer:

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# 527516 (CA-OP-14-191).

The El Paso County Constable's Office (the "constable's office") received a request for information pertaining to a former deputy. You state the constable's office has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes an officer's Texas Commission on Law Enforcement ("TCOLE") identification number. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand the officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database, and may be used as an access device number on the Texas Commission on Law Enforcement ("TCOLE") website. Thus, we find the officer's TCOLE identification number does not constitute public information under section 552.002 of the Government Code. Therefore, the officer's

TCOLE identification number is not subject to the Act and need not be released to the requestor.

Next, we note a portion of the submitted information consists of a completed report made by the constable's office, which is subject to section 552.022(a)(1) of the Government Code. Pursuant to section 552.022(a)(1), completed investigations, reports, and evaluations are expressly public unless they are either excepted under section 552.108 of the Government Code or confidential under the Act or other law. Gov't Code § 552.022(a)(1). Although you raise section 552.103 of the Government Code, section 552.103 is a discretionary exception to disclosure and does not make information confidential under the Act. *See id.* § 552.007; *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 (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 does not make information confidential for the purposes of section 552.022. Therefore, the constable's office may not withhold the completed report, which we have marked, under section 552.103 of the Government Code. However, because section 552.101 of the Government Code makes information confidential under the Act, we will address the applicability of this exception to the completed report we have marked.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including section 1701.454 of the Occupations Code. Section 1701.454 governs the public availability of information submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

- (a) All information submitted to [TCOLE] under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.
- (b) Except as provided by this subchapter, a [TCOLE] member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. The information subject to section 552.022(a)(1) consists of an F-5 Report of Separation of Licensee. The information at issue does not indicate the officer at issue resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the constable's office must withhold the submitted F-5 report, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

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). 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, 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and submit documentation demonstrating, prior to the constable's office's receipt of this request, a lawsuit against the constable's office was filed by the former deputy and is currently pending in the 34th Judicial District Court of El Paso County, Texas. You further state the remaining information is related to the pending litigation because it pertains to the claims in the lawsuit. Upon review of your arguments and the information at issue, we find the remaining information relates to litigation that was pending when the constable's office received this request for information. Accordingly, the constable's office may generally withhold the remaining information under section 552.103 of the Government Code.<sup>1</sup>

However, we note the opposing party in the anticipated litigation has seen or had access to some of the information at issue. 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. Thus, if the opposing party has seen or had access to information relating to litigation, through discovery or otherwise, then there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Therefore,

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

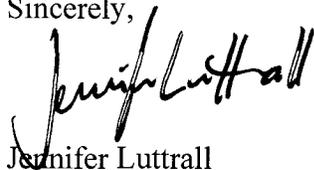
the information we have marked is not protected by section 552.103 and may not be withheld on that basis. Furthermore, to the extent the opposing party has seen or had access to any of the remaining information, it is not protected by section 552.103 and may not be withheld on that basis. We also note the applicability of section 552.103 ends once the related litigation concludes or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the officer's TCOLE identification number is not subject to the Act and need not be released to the requestor. The constable's office must withhold the submitted F-5 report, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. Except for the information we have marked, the constable's office may withhold the remaining information under section 552.103 of the Government Code to the extent the opposing party has not seen or had access to it. 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.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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/akg

Ref: ID# 527516

Enc. Submitted documents

c: Requestor  
(w/o enclosures)