



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 10, 2012

Ms. Alexis G. Allen
For City of Rowlett
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

OR2012-14337

Dear Ms. Allen:

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# 464899.

The Rowlett Police Department (the "department"), which you represent, received a request for the traffic engineering report pertaining to a specified intersection. 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 information.

Section 552.103 of the Government Code provides:

(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 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 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). This office has held for purposes of section 552.103, "litigation" includes "contested cases" conducted in a quasi-judicial forum. *See Open Records Decision Nos. 474* (1987), *368* (1983), *336* (1982), *301* (1982). In determining whether an administrative proceeding is conducted in a quasi-judicial forum, some of the factors this office considers are whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See Open Records Decision No. 588* (1991).

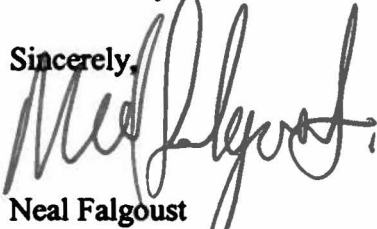
You state the requestor was issued a citation for running a red light at the specified intersection. You explain the requestor is subject to a civil penalty for the citation and has requested a hearing to appeal the imposition of a fine. You state the hearing was pending before a hearing officer at the time the department received the request for information. However, you have provided no explanation as to how the city's administrative process relating to the appeal of a civil fine constitutes litigation of a judicial or quasi-judicial nature for purposes of section 552.103. *See generally* ORD 301 (discussing meaning of "litigation" under predecessor to section 552.103). Consequently, we find you have not established the department was involved in pending litigation or reasonably anticipated litigation when it received the request for information. Accordingly, the department may not withhold the submitted information under section 552.103 of the Government Code. As you raise no other exceptions, 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, 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 464899

Enc. Submitted documents

c: Requestor
(w/o enclosures)