



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2014

Ms. Cary Grace
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2014-21603

Dear Ms. Grace:

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# 545000.

The Austin Police Department (the "department") received a request for: (1) the aggregate number, as well as a breakdown by rank and years of service, of city personnel who are collecting intelligence or monitoring the activity of a named individual and members of the Peaceful Streets Project ("PSP"); (2) communications during a specified time period that mention this individual or PSP; (3) a specified ARIC Situational Awareness Bulletin; and (4) all charges against the named individual that the department has submitted to the city, county, or district attorney. The department received a second request for information pertaining to the same named individual and the PSP. You state the department does not have information responsive to the first category of the initial request.¹ You claim the submitted information is excepted from disclosure under sections 552.103 and 552.111 of

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially you state, and we agree, the information you have marked is not responsive to the instant requests for information. This ruling does not address the public availability of the non-responsive information, and that information need not be released.

Next, 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). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) applies 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 requested information is related to that 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

You contend the responsive information is related to pending litigation in which the City of Austin, the department, and employees of the department in their employment capacity are named as defendants. You inform us, and have provided documentation demonstrating, suit was pending on the date the initial request was received in the United States District Court for the Western District of Texas, Austin Division, Civil Action No. 1:13-cv-01100, *Antonio Francis Buehler v. City of Austin/Austin Police Department, et al.* You assert the

²We assume that 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.

responsive information is related to the pending lawsuit. Based on your representations and our review, we find litigation was pending when the department received the initial request for information and the information at issue is related to the pending litigation for the purposes of section 552.103. Therefore, the department may withhold the responsive information under section 552.103 of the Government Code.³

We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. 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).

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bhf

Ref: ID# 545000

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining argument.