



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 21, 2015

Ms. Cynthia Trevino
Counsel for City of Copperas Cove
Denton Navarro Rocha Bernal Hyde & Zech, PC
2500 William Cannon, Suite 609
Austin, Texas 78745-6438

OR2015-09953

Dear Ms. Trevino:

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# 564372 (Reference No. W002610).

The Copperas Cove Police Department (the "department"), which you represent, received a request for audio and video recordings made on a certain date that depict a specific shooting. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor specifically seeks video and audio recordings that depict the confrontation between a named officer and a suspect on a certain date, including the officer's body camera, body microphone, and patrol unit. Some of the submitted information consists of crime scene photographs taken after the confrontation and audio recordings of polygraph examinations conducted after the incident. We conclude that information is not responsive to the request. This ruling does not address the public availability of information that is not responsive to a request, and the department is not required to release non-responsive 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, 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 state, and provide documentation showing, the City of Copperas Cove and the department are defendants in a lawsuit pending in the United States District Court for the Western District of Texas, assigned cause number 6:15-CV-00025-WSS. This lawsuit was pending at the time the department received the request, and you state the information at issue relates to the pending litigation. Based on these representations and our review, we conclude the department was involved in pending litigation related to the information at issue when it received the request. Accordingly, the department may withhold the responsive information under section 552.103 of the Government Code.¹

We note, however, once the information at issue has been obtained by all parties to the anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. See Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information obtained from or provided to all other parties in the anticipated litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded or is

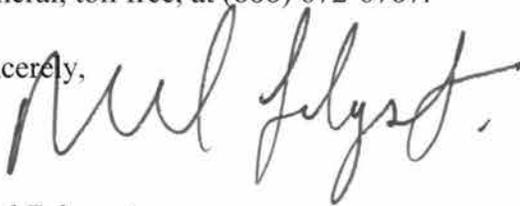
¹As our ruling is dispositive, we do not address the remaining claimed exceptions.

no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* 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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a large, prominent initial "N".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

Ref: ID# 564372

Enc. Submitted documents

c: Requestor
(w/o enclosures)