



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 22, 2015

Ms. Sandra Kim  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2015-10032

Dear Ms. Kim:

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# 564622.

The City of Austin (the "city") received a request for twenty-nine categories of information pertaining to a specified officer-involved shooting.<sup>1</sup> You indicate the city will release some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note you have marked some of the submitted information as not responsive to the instant request. Further, we note the requestor excluded from the request records that are solely contained in any employee's personnel file maintained under section 143.089(g) of the Local Government Code. *See* Local Gov't Code § 143.089(g) ("A . . . police department

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<sup>1</sup>We note the requestor has excluded from the request "records that are *solely* contained in a peace officer's personnel file, as defined by [section] 143.089(g)" of the Local Government Code.

<sup>2</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.

may maintain a personnel file on a . . . police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a . . . police officer."); *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied). You state the timesheets marked as Exhibit D are "contained *only* within the [city's police] department's internal files for each of the police officers at issue." Accordingly, the information in Exhibit D also is not responsive to the present request. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.<sup>3</sup>

Section 552.103 of the Government Code provides in relevant part 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 section 552.103(a) 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. *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.

You state, and provide documentation showing, prior to the city's receipt of the instant request, a lawsuit styled *Bradley v. Copeland*, Case No. 1:14-CV-00212-LY, in which a city

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<sup>3</sup>As our determination is dispositive, we need not address the city's argument against disclosure of the information in Exhibit D.

police officer, as a consequence of the officer's employment, and the city are named parties, was filed and is currently pending against the city and the city police officer, in the United States District Court for the Western District of Texas, Austin Division. Therefore, we agree litigation was pending on the date the city received the present request for information. You assert the responsive information in Exhibits A, B, and C pertains to the substance of the lawsuit claims. Based on your representations and our review, we find the information at issue is related to the pending litigation. Therefore, we conclude the city may withhold the responsive information in Exhibits A, B, and C under section 552.103 of the Government Code.<sup>4</sup>

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending 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 been concluded. *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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

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<sup>4</sup>As we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

Ref: ID# 564622

Enc. Submitted documents

c: Requestor  
(w/o enclosures)