



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2015

Ms. Rebecca R. Walton
County Attorney
Office of the County Attorney
Hardin County
P.O. Box 516
Kountze, Texas 77625

OR2015-16918

Dear Ms. Walton:

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# 575634.

The Hardin County Sheriff's Department (the "sheriff's department") received a request for a specified incident report. The sheriff's department claims the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception the sheriff's department claims and reviewed the submitted information.

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

The sheriff's department states the submitted information pertains to a criminal investigation that was pending on the date the sheriff's department received the request for information. However, we note the sheriff's department is not a party to the anticipated criminal litigation. Therefore, the sheriff's department does not have a litigation interest in the matter for purposes of section 552.103. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990). In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103(a). However, the sheriff's department has not submitted an affirmative representation from a governmental body with a litigation interest objecting to the release of the submitted information under section 552.103(a). Thus, we find the sheriff's department has failed to establish the sheriff's department reasonably anticipated litigation when it received the request for information. Accordingly, the sheriff's department may not withhold any of the submitted information under section 552.103(a). As no other exceptions to disclosure are raised for the submitted information, the sheriff's department must release it.

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 'D. Wheelus', with a long horizontal flourish extending to the right.

David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 573634

Enc. Submitted documents

c: Requestor
(w/o enclosures)