



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 17, 2015

Sergeant Rocky Bright  
Custodian of Records  
Ector County Sheriff's Office  
P.O. Box 2066  
Odessa, Texas 79760

OR2015-16973

Dear Sergeant Bright:

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# 575678.

The Ector County Sheriff's Office (the "sheriff's office") received a request for five categories of information related to a named peace officer, including all documents related to internal investigations, disciplinary matters, or complaints related to the named peace officer and specified training records of the named peace officer. 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 of information.

Initially, we note you only submitted information related to disciplinary matters pertaining to the named peace officer. Although you state the sheriff's office submitted a representative sample of the requested information, we find the submitted information is not representative of all of the information to which the requestor seeks access. Please be advised this open records letter applies to only the types of information you have submitted for our review. This ruling does not authorize the sheriff's office to withhold any information that is substantially different from the type of information you submitted to this office. *See Gov't Code* § 552.302. Therefore, to the extent any other information responsive to the request existed upon the receipt of the request, we assume the sheriff's office has released it to the requestor. If the sheriff's office has not released any such information, it must do so at this time. *Id.* §§ 552.301 (a), .302; Open Records Decision No. 664 (2000) (noting that if

governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

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).

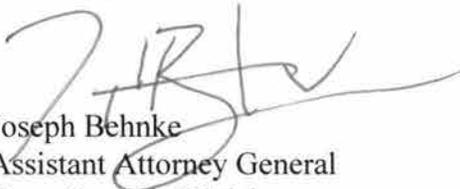
The sheriff's office states, and provides documentation showing, a lawsuit styled *Bruce Henkel v. David Escudero, et al.*, Cause No. 7:14-CV-105, was pending against the sheriff's office in the United States District Court for the Western District of Texas, Midland/Odessa Division, when it received the request for information. Therefore, we agree litigation was pending when the sheriff's office received the request. We also find the submitted information is related to the pending litigation for purposes of section 552.103(a). Therefore, the sheriff's office may withhold the submitted information under section 552.103(a).

However, once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 575678

Enc. Submitted documents

c: Requestor  
(w/o enclosures)