OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 22, 2003

Ms. Janis Kennedy Hampton
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2003-2675

Dear Ms. Hampton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179794.

The City of Bryan Police Department (the "department") received a request for four categories of information pertaining to the City of Bryan (the "city") and Planned Parenthood. The city claims that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.[1] We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address the city's concern regarding the public nature of some of the requested information. The Public Information Act (the "Act") requires the public release of "public information." "Public information" means information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by a governmental body, or for a governmental body where the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(1), (2). Section 552.003(b) of the Government Code excludes the judiciary from the Act. Therefore, the Act neither authorizes information held by the judiciary to be withheld nor requires it be disclosed. *See* Open Records Decision No. 25 (1974).

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[1]We 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.

You inform us that after a citation is issued to a violator, "the copies of the citations are turned into Intake at the Bryan Police Department. The information contained on the citations is entered into a computer at the Bryan Police Department and the citations themselves are placed into a lock box and transported to the Bryan Municipal Court Building." You also state that "[n]o copies of the citations are maintained at the Bryan Police Department" and that there are no "copies of citations responsive to this request in the possession of the Bryan Police Department." Based on your representations and our review of the submitted information, we believe that the department "collected" and "assembled" the citations, and "maintained" the citations at least until their transfer to the Municipal Court. It would be inconsistent with the language of the Act to conclude that the Act does not apply to information collected by a governmental body simply because the information was intended to be transferred to another entity. *See* Open Records Decision 519 at 4 (1989). Thus, during that time the department possesses the citations, however brief, we find that the citations are subject to the Act. *See* Gov't Code § 552.003.

Next we address whether the citation information entered into the computer at the department is responsive to the request. In responding to a request for information, the governmental body must make a good-faith effort to relate the request to the information that it holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8- 9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). The city notes that one category of the request seeks only citations issued by the department and does not request any records concerning citation information. However, we note that two of the remaining categories of the request seek all documentation, written or *electronic*, that address citizen complaints or calls for service at Planned Parenthood. Accordingly, any citation information entered into the computer at the department that addresses citizen complaints or calls for service at Planned Parenthood is responsive to the request. Thus, we will address your section 552.103 argument for the citations, the citation information contained in the department's computers, and the remainder of the submitted information.

Section 552.103 provides 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.
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> (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.

The city has the burden of providing relevant facts and documents to show that 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 at the time the request is received, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *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 city must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, that litigation involving the requestor and the city is pending and was pending on the date that the city received the present request for information. Based on our review of the submitted information, we conclude that the city has demonstrated that the requested information is related to that litigation for purposes of section 552.103. Accordingly, we conclude that the city may withhold the requested information from disclosure pursuant to section 552.103 of the Government Code.

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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). As section 552.103 is dispositive, we need not address your remaining arguments.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 179794

Enc: Submitted documents

c: Mr. Donald L. Parsons
4721 Williamsburg Drive
Bryan, Texas 77802
(w/o enclosures)