



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2008

Mr. Stephen E. Bristow
District Attorney
90th Judicial District
516 Fourth Street, Room 206
Graham, Texas 76450

OR2008-08224

Dear Mr. Bristow:

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# 312895.

The Stephens County Sheriff's Office and the Stephens County Judge (collectively, the "county") received a request for all documents regarding the employment history, continuing education information, and job evaluations for named employees; information regarding deficiencies and deaths at the county jail; communications between named individuals; and job references provided to, address changes made by, statements referring to, and payroll information regarding a named employee. You state that the county will release some of the information. You state that the county does not have information responsive to a portion of the request for information regarding job performance evaluations for named employees, job references written for a named employee, or change of address information for a named employee.¹ You also claim that the county does not have any information pertaining to deaths at the jail. In particular, you inform this office that the county has not been provided the report prepared by the Texas Rangers following a January 15, 2008 death. Accordingly, the county is not required to disclose this report. However, to the extent the county had information responsive to this aspect of the request on the date the request was received, we assume that the county has released it to the requestor. If the county has not released any

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

such information, the county must do so at this time. *See* Gov't Code §§ 552.301(a), .312. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you indicate that a portion of the requested information is the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2004-09230 (2004). You also indicate that the law, facts, and circumstances on which this prior ruling was based have not changed. Thus, we determine that the county must continue to rely on our ruling in Open Records Letter No. 2004-09230 as a previous determination and withhold or release the information in the current request that is identical to the information previously requested and ruled upon by this office in accordance with that decision. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address the submitted arguments for the portions of the requested information that were not the subject of the previous ruling.

Section 552.103 of the Government Code provides in part:

(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 that claims an exception to disclosure under section 552.103 must provide relevant facts and documents sufficient to establish the applicability of this exception to the information at issue. To meet this burden, the governmental body must demonstrate that: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information; and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements

of the test must be met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

You state, and provide documentation showing, that the county received the request for information after a lawsuit styled *Jimmy Whitt vs. Stephens County, Texas; James Kyle Buse, Jr., Freda B. Lewing, Johnny Munoz Ponce, Jody Jenkins, and Bryson Kanady*, Cause No. 291473, was filed in the 90th District Court of Stephens County, Texas. Based upon your representations and the information presented, we conclude that the litigation was pending on the date that the county received this request for information and that this information is related to the litigation. Therefore, the county may withhold Exhibits 1, 2, 3, 5, 6, and 12 under section 552.103 of the Government Code.²

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). We also note that the applicability of section 552.103(a) ends once the litigation has concluded or is no longer anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline,

²As our ruling is dispositive, we will not address your remaining arguments.

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 challenge 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 Office of the Attorney General 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. 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,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/mcf

Ref: ID# 312895

Enc. Submitted documents

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(w/o enclosures)