



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 26, 2010

Mr. Charles T. Jeremiah
Chamberlain, Hrdlicka, White, Williams & Martin
For City of Pasadena
1200 Smith Street, Suite 1400
Houston, Texas 77002

OR2010-04302

Dear Mr. Jeremiah:

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# 374882.

The Pasadena Police Department (the "department"), which you represent, received a request for the dispatcher's sign-in and sign-out daily log for a named police officer and fuel receipts for the squad car assigned to that officer, both for a specified date. You claim that 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 representative sample of information. We have also considered comments from the requestor. Gov't Code § 552.304(a) (authorizing person to submit written comments stating reasons why information at issue should or should not be released).

Initially, we note that the submitted information pertains only to the request for fuel receipts. You characterize this information as a "representative sample." See Gov't Code § 552.301(e)(1)(D) (governmental body must submit, in connection with request for attorney general decision, the requested information or representative samples thereof). However, in our opinion, this information is not representative of all of the types of information requested. Please be advised that this open records letter only applies to the type of information you have submitted for our review. Therefore, this opinion 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. See *id.* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). To the extent information responsive to the request for the dispatcher's sign-in and sign-out daily log for the named police officer existed on the date the department received this request, we assume you have

released it. If you have not released this information, you must do so at this time. *See id.* §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.103 of the Government Code provides:

(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). When a governmental body receives a request for information that relates to pending or anticipated litigation, it may raise section 552.103 as an exception to disclosure in order to protect its litigation interests. *See* Gov't Code 552.103; Open Records Decision No. 551 at 4 (1990) (noting that predecessor to section 552.103 protects discovery process and avoids interference in matters properly resolved in court by excepting from disclosure information when access to such material is more appropriately sought through discovery). The governmental body claiming this exception bears the burden of providing relevant facts and documents to demonstrate the applicability of the exception. 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, 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.); ORD 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You have provided documentation showing that, prior to the department's receipt of the present request for information, a lawsuit styled *McCay Christensen and Wife Kim Christensen vs. Terry Thistle, Kirkland Brothers, Inc. and Jetco Heavy Haul, LLC*, Cause No. 2009-20296 was filed and is currently pending in the 234th Judicial District Court of Harris County, Texas. You inform us that the officer named in the request filed the above mentioned lawsuit against the requestor's clients for damages related to a traffic accident between the officer and a tractor-trailer owned by the requestor's clients. Additionally, you

inform us, and have provided documentation showing, the City of Pasadena filed a petition in intervention in July 2009 and is now also a party to this lawsuit. We therefore agree that litigation was pending on the date the department received the request. We further find that the submitted information relates to the pending litigation. Accordingly, the department may withhold the submitted information pursuant to section 552.103.

We note, however, that once the information at issue has been obtained by all parties to the anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information at issue that has either been obtained from or provided to all opposing parties in the anticipated 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 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 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/dls

Ref: ID# 374882

Enc. Submitted documents

c: Requestor
(w/o enclosures)