



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2010

Ms. Margaret Ward
Shotts, Pardue, Trevino & Guevara, L.L.P.
Attorney for City of Burkburnett
2237 Hillside Drive
San Angelo, Texas 76904

OR2010-17353

Dear Ms. Ward:

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# 400776.

The City of Burkburnett (the "city"), which you represent, received a request for the following information for a specified time period: (1) any data collected from taser devices issued by the city's police department to a named officer and (2) documents pertaining to the officer's use of a taser while on duty. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the city does not have the computer capability to provide information responsive to the request for any data collected from the taser devices at issue nor do any documents exist with respect to such data. We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *See 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). A governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the city has made a good faith effort to do so.

¹You inform us the city withdraws its initial claims under sections 552.102 and 552.108 of the Government Code. We note you did not raise section 552.102 in your briefing to this office. Furthermore, although you appear to raise section 552.101 of the Government Code in conjunction with section 552.130 of the Government Code, section 552.101 does not encompass other exceptions in the Act.

You claim the submitted information is excepted from public disclosure pursuant to section 552.103 of the Government Code, which 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 has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) that litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) that the information at issue is related to that 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 inform us, and provide documentation showing, that prior to the city's receipt of the present request for information, the city was named as a defendant in a lawsuit styled *Robert Head v. City of Bur[k]burnett*, case number 7-10-CFV-114-0, which was filed in the United States District Court, Northern District of Texas, Wichita Falls Division. Further, you state the submitted information contains references to taser usage by the officer named in the request which directly relate to allegations of improper use of a taser gun. Upon review, we conclude litigation was pending when the city received the request. We also find the submitted information is related to the pending litigation for purposes of section 552.103. Thus, section 552.103 is generally applicable to the submitted information.

We note, however, basic factual information about a crime must be released. *Open Records Decision No. 362 (1983)*. Information normally found on the front page of an offense report is generally considered public, and must be released. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex Civ. App.—Houston [14th Dist. 1975, writ ref'd n.r.e.); *see Open Records Decision No. 127 (1976)*. Basic information includes the identification and description of the complainant as well as a detailed description of the offense. *See ORD 127*. The submitted information consists of reports of criminal incidents. Thus, with

the exception of basic information, the city may withhold the submitted information under section 552.103 of the Government Code.²

We note, 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. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties in the pending 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. *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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID# 400776

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining argument against disclosure.