



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 20, 2011

Mr. Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2011-01010

Dear Mr. Hager:

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# 406317.

The City of Lancaster (the "city"), which you represent, received a request for memoranda signed or initialed by a named individual and city police department policies and procedures passed or signed since the named individual was named chief of police. 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 representative sample of information.¹

Initially, you claim the request for information is vague and overbroad, and that compliance with this request would require a great deal of time. However, a governmental body may not refuse to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976); *see also* Open Records Decision No. 497 at 4 (1988) (fact that submitting copies for review may be burdensome does not relieve governmental body of its

¹We assume 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.

responsibility to do so). Section 552.222 of the Government Code authorizes a governmental body to ask the requestor to clarify or narrow requests for information that are unclear or burdensome. *See* Gov't Code § 552.222(b). You have not elected to do so. Therefore, the city is required to make a good faith effort to relate the request to information that is within the city's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We assume you have done so. Accordingly, we address your claimed exception to disclosure of the submitted representative sample of responsive information.

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). 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 on the date the department 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.); 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). The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See* Gov't Code § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception).

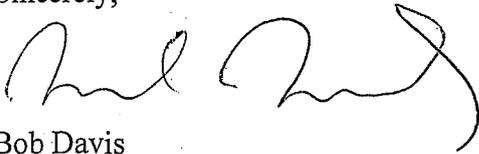
You state, and provide documentation reflecting, the city received the request for information after a lawsuit had been filed by the city against the requestor in Dallas County district court. Based on your representation and our review, we conclude litigation involving the city was pending when the city received the request. However, you do not provide any arguments explaining, and we are unable to discern, how the responsive information relates in any way to this pending litigation. Thus, we conclude you have failed to demonstrate the applicability

of section 552.103 of the Government Code to the responsive information, and no information may be withheld on that basis. As you raise no other exceptions to disclosure, the submitted information must be released.

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,

A handwritten signature in black ink, appearing to read 'Bob Davis', written in a cursive style.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 406317

Enc. Submitted documents

c: Requestor
(w/o enclosures)