



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 23, 2012

Ms. Janet M. Spugnardi
Assistant City Attorney
City of Murphy
Messer, Campbell & Brady
6351 Preston Road, Suite 350
Frisco, Texas 75034

OR2012-11337

Dear Ms. Spugnardi:

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# 459835.

The Murphy Police Department (the "department"), which you represent, received a request for a specified policy. 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 information.

Initially, we note the requestor has asked the department to answer a question. In responding to a request for information under the Act, a governmental body is not required to answer factual questions, conduct legal research, or disclose information that did not exist at the time the request was received. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See Open Records Decision No. 561 at 8-9 (1990)*. We assume the department has made a good-faith effort to do so.

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). The department has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date of the receipt of the request for information and (2) the information at issue is related to the pending or anticipated 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 department must meet both prongs of this test for information to be excepted under section 552.103(a).

You claim the submitted information pertains to pending litigation. You inform us, and have provided documentation showing, a lawsuit styled *Patrick Greene v. Police Officer Aaron McCarty Murphy, Texas Police Department*, Case Number: 2011-CI-15632, was filed and is pending against a department police officer in the Bexar County District Court. Based on your representations and our review, we determine the litigation was pending on the date the department received the request for information, and that the department police officer is a party to the litigation as a consequence of his office or employment. You state the information at issue relates to issues raised in the pending litigation. Based on your representations and our review, we find the submitted information is related to the pending litigation for the purposes of section 552.103. Accordingly, the department may withhold the submitted information under section 552.103 of the Government Code.

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). Further, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/bs

Ref: ID# 459835

Enc. Submitted documents

c: Requestor
(w/o enclosures)