



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 11, 2012

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2012-19917

Dear Ms. Graham:

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# 473320.

The Mesquite Police Department (the "department") received a request for information concerning a specific collision. You state the department has released some of the information. You state the department will redact information under section 552.130 of the Government Code and pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We address your assertion of section 552.103 of the Government Code first, as it is potentially the most encompassing. Section 552.103 provides:

¹Section 552.130 of the Government Code permits a governmental body to redact information subject to subsections 552.130(a)(1) and 552.130(a)(3) without requesting a decision from this office, but the governmental body must provide notice to the requestor. See Gov't Code § 552.130(c)-(e). Open Records Decision No. 684 permits a governmental body to redact certain categories of information, including a Texas license plate number under section 552.130 of the Government Code, without requesting a decision from this office.

(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 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 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.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated").

You state the requestor filed a lawsuit against the department on September 20, 2012, in relation to the specified collision. However, upon review, we find the department received the request for information on September 19, 2012, prior to the filing of the lawsuit. Accordingly, we find the department has not demonstrated litigation was pending at the time it received the request. Further, you have not demonstrated litigation was reasonably anticipated when the request was received. Consequently, the department may not withhold the submitted information under section 552.103 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, such as section 143.090 of the Local Government Code. You state the City of Mesquite is a civil service city under chapter 143 of the Local Government Code. Section 143.090 of the Local Government Code, provides:

A department, [the Fire Fighters' and Police Officers' Civil Service Commission], or municipality may not release a photograph that depicts a police officer unless:

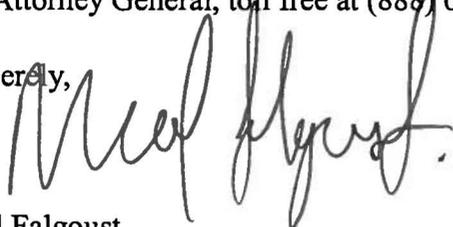
- (1) the officer has been charged with an offense by indictment or by information;
- (2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;
- (3) the photograph is introduced as evidence in a judicial proceeding;
or
- (4) the officer gives written consent to the release of the photograph.

Local Gov't Code § 143.090. You state some of the submitted photographs depict police officers, and you do not indicate the police officers have provided the department with written consent regarding the release of the photographs. Therefore, to the extent the exceptions under section 143.090 are not applicable, the department must withhold the photographs depicting police officers under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code. As you raise no further exceptions to disclosure, the department must release the remaining information.

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 473320

Enc. Submitted documents

c: Requestor
(w/o enclosures)