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ATTORNEY GENERAL OF TEXAS

February 12, 2016

Mr. Alan Bojorquez
Counsel for the City of Jarrell
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Austin, Texas 78750

OR2016-03476

Dear Mr. Bojorquez:

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# 601163.

The City of Jarrell (the "city"), which you represent, received a request for information pertaining to a specified case. You state the city has no information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.103, 552.119, and 552.132 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²Although you also raise sections 552.101, 552.102, 552.107, 552.108, 552.1175, and 552.140 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claim these sections apply to the requested information. *See Gov't Code* §§ 552.301, .302.

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 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, orig. proceeding); *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 governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

You state, and the documents reflect, a lawsuit styled *City of Jarrell v. Rhodes*, Cause No. 5284, was pending in city municipal court, when the city received the request for information. Therefore, we agree litigation was pending when the city received the request. We also find you have established the submitted information is related to the pending litigation for purposes of section 552.103(a). Therefore, the city may generally withhold the submitted information under section 552.103(a).

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 party in the litigation is not excepted from disclosure under section 552.103(a). We note the submitted information includes a citation that was issued to the requestor, who is the opposing party to the litigation at issue. Therefore, the city may not withhold the citation pursuant to section 552.103. Nevertheless, we agree the city may withhold the remaining information under section 552.103 of the Government Code.³ We note the applicability of section 552.103(a) ends once the litigation

³As our ruling is dispositive, we do not address your other arguments to withhold this information.

has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

You raise sections 552.119 and 552.132 of the Government Code for the citation that was issued to the requestor. Section 552.119 provides as follows:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure.

Gov't Code § 552.119. Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, release of the photograph would endanger the life or physical safety of a peace officer. Upon review, the information at issue does not consist of a photograph that depicts a peace officer, the release of which would endanger the life or physical safety of the officer. Accordingly, the city may not withhold any of the information at issue under section 552.119 of the Government Code.

552.132 of the Government Code provides, in pertinent part:

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

- (1) the name, social security number, address, or telephone number of a crime victim or claimant; or
- (2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

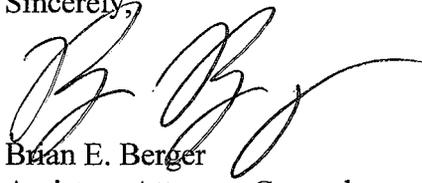
Id. § 552.132(b). The information at issue is held by the city, not the crime victim's compensation division of the attorney general's office. Therefore, section 552.132(b) is not applicable to this information. Accordingly, the city may not withhold any of the information at issue under section 552.132.

In summary, with the exception of the citation issued to the requestor, which must be released, the city may withhold the submitted information under section 552.103(a) of the Government Code.⁴

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 601163

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the requestor has a right of access to some of the information being released in this instance. See Gov't Code § 552.023(b); Open Records Decision No. 481 at 4 (1987). If the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.