



May 9, 2000

Mr. Bryan H. Davis
County Attorney
County of Nacogdoches
101 West Main Street, Room 218
Nacogdoches, Texas 75961

OR2000-1797

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135005.

The Nacogdoches County Judge (the "county judge") received a written request for the statements of two county employees complaining of the behavior of a county commissioner. You have submitted to this office for review the two statements at issue, which you contend are excepted from required public disclosure pursuant to sections 552.101, 552.102, and 552.103 of the Government Code.

We address first your contention that the requested records contain information that must be withheld pursuant to sections 552.101 and 552.102 of the Government Code. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102(a) of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test for section 552.102(a) protection is the same as that for information protected by common law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

We have reviewed the two statements at issue as well as newspaper articles provided to this office by the requestor. We first note that the actions complained of by the two county employees gave rise to criminal charges against the county commissioner, who, you inform us, pleaded *nolo contendere* to resulting assault charges and has paid a fine. Information contained in public court records may not be withheld from the public on privacy grounds.

See Star-Telegram v. Walker, 834 S.W.2d 54 (Tex. 1992). We additionally note that the identities of the two county employees, having been published in a local newspaper, is now common public knowledge, as is the fact that the commissioner made “offensive remarks” to the two employees. Given these facts, we find no privacy interest in the information at issue. Accordingly, no portion of the requested statements may be withheld on privacy grounds.

The test for establishing that section 552.103 applies to requested information is a two-pronged showing that (1) the information at issue is related to litigation that is pending or reasonably anticipated at the time the request for the information is received, and (2) that the governmental body seeking to withhold the information is a party to that litigation. Gov’t Code § 552.103(a), (c); *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997), *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref’d n.r.e.). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You have not demonstrated that litigation against the county is reasonably anticipated in this instance. Consequently, the county judge may not withhold the statements pursuant to section 552.103. Because you have not demonstrated that the records at issue are excepted from required public disclosure, these documents must be released in their entirety.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

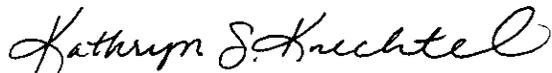
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kathryn S. Knechtel
Assistant Attorney General
Open Records Division

KSK/RWP/ljp

Ref: ID# 135005

Encl. Submitted documents

cc: Ms. Miranda Lindsey
4920 Colonial Drive
Nacogdoches, Texas 75961
(w/o enclosures)