



June 1, 2000

Mr. Tim R. Taylor
County Attorney
County of Titus
100 West First Street
Mt Pleasant, Texas 75455

OR2000-2136

Dear Mr. Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135907.

Titus County (the "county") received a request for a copy of the letter of intent to file suit and other documents submitted on behalf of a former county employee in a sexual harassment claim against the county.¹ The requestor also seeks all correspondence with the mediator made prior to mediation. You claim that the county has released some of the requested information, but that some of the responsive information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The primary purpose of the litigation exception is to enable governmental bodies to protect their position in litigation by requiring parties seeking relevant information to obtain it, if at all, through "discovery" processes; and that purpose may survive a previous disclosure to be applicable in prospective litigation involving the same information. *Cornyn v. City of Garland*, 994 S.W.2d 258, 265 (Tex. App.--Austin 1999, no pet.) (citing Open Records Decision No. 454 (1986) (governmental body may retain legitimate reasons for insisting that prospective plaintiff obtain information through "discovery," notwithstanding governmental body's previous disclosure of information to prospective co-defendant). The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. To show that section 552.103 is applicable, the governmental body must demonstrate that: 1) litigation is pending or reasonably anticipated at the time of the request, and 2) the information at issue

¹You assert the sexual harassment claim was ultimately settled through mediation.

is related to that litigation. *University of Tex. Law Sch, v. Texas 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). Section 552.103 requires concrete evidence that litigation may ensue. A governmental body may establish that litigation is reasonably anticipated by showing that 1) it has received a claim letter from an allegedly injured party or his attorney and 2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act (TTCA). Open Records Decision No. 638 (1996).

You have submitted a letter from a former county deputy sheriff which you state complies with the notice of claim provisions of the TTCA. Further, you assert that the information requested serves as a basis for the present claim against the county. Having reviewed the submitted documents, we conclude that litigation is reasonably anticipated, and that the information submitted is related to the anticipated litigation. Thus, you may withhold some of the requested information from public disclosure under section 552.103. We have marked the information you may withhold.

Generally, 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). Information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. We also note that the applicability of section 552.103(a) ends once the litigation has concluded.² Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Included among the documents you seek to withhold are two letters outlining the county's and sheriff's department's sexual harassment policies. Substantive rules of general applicability and statements of general policy or interpretations of general applicability formulated and adopted by an agency are expressly made public by section 552.022(a)(10) of the Government Code and are not excepted from required disclosure unless expressly made confidential by other law. Gov't Code § 552.022(a)(10). Sections 552.103, 552.107, and 552.111 are discretionary exceptions that do not make information confidential. The sexual harassment policy letters must be released. We have marked the letters with blue flags.

In summary, you may withhold the requested information under section 552.103, except you must release the information marked with blue flags.

Because we have resolved your request under section 552.103, we do not consider your alternative arguments. This letter ruling is limited to the particular records at issue in this

²We note that some of the information requested may be confidential by law and not subject to disclosure following the conclusion of litigation. See Civ. Prac. & Rem. Code § 154.073 (communications relating to alternate dispute resolution procedure is confidential). Should you receive an open records request subsequent to the conclusion of litigation for information you believe is not subject to disclosure, you must submit another request for opinion to this office.

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.

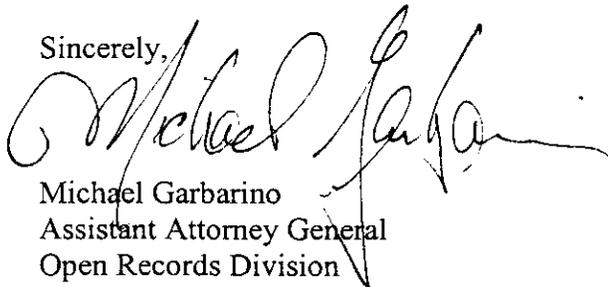
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/CHS/ljp

Ref: ID# 135907

Encl. Submitted documents

cc: Ms. Wanda Schindley
Route 2, Box 950
Mt. Pleasant, Texas 75455
(w/o enclosures)