



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2006

Mr. James M. Frazier III
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2006-06625

Dear Mr. Frazier:

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# 252040.

The Texas Department of Criminal Justice (the "department") received a request for the following information related to a specified requisition and purchase order:

1. All notes, documents, letters, emails, memoranda, reports, investigative reports, etc. that discuss or reference or refer to Sigma Engineering or Sigma Equipment Corp. of White Plains, New York[;]
2. All notes, documents, letters, emails, memoranda, reports, investigative reports, etc. that discuss or reference or refer to TDCJ Requisition No. 696-3-50164-V, its attachments, or to the formulation of said purchase order;
3. All notes, documents, letters, emails, memoranda, reports, investigative reports, etc. that discuss or reference or refer to State Purchase Order No. 3-001454, its attachments, or to the formulation of said purchase order;
4. All notes, documents, letters, emails, memoranda, reports, investigative reports, etc. that discuss the purchase or construction of a soap bar manufacturing system for any entity that comprises the State of Texas; and

5. All notes, documents, letters, emails, memoranda, reports, investigative reports, etc. that identify individuals or entities within the State of Texas familiar with or interested in soap bar manufacturing systems.

You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

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. The department has the burden of providing relevant facts and documents to show that 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, 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). The department 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 that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986). In Open Records Decision No. 638 (1996), this office stated that a governmental body has met its burden of showing that litigation is reasonably anticipated when it received a notice of claim letter and the governmental body represents that the notice of claim letter

¹We note that in your letter dated April 25, 2006, you have withdrawn your assertions under sections 552.101, 552.104, 552.107(1), 552.108, 552.110, and 552.111, of the Government Code.

is in compliance with the requirements of the Texas Tort Claims Act ("TTCA"), Civ. Prac. & Rem. Code, ch. 101, or an applicable municipal ordinance.

You state that the department has received a notice of claim from Sigma, which you state is in compliance with statutory notice requirements of a pending breach of contract claim. You state, and the documents reflect, that the notice of claim was submitted to the department prior to the present request for information. Therefore, we conclude that the department reasonably anticipated litigation on the date it received the request for information. We also find that the submitted information relates to the anticipated litigation for purposes of section 552.103.

We note, however, that some of the submitted documents reflect on their face that they were obtained from or provided to representatives of Sigma, which appears to be the only opposing party in the anticipated litigation. Further, you acknowledge that while most of the submitted photographs have been retained in-house, some of them "were emailed to Sigma during the course of their attempts to make repairs." Once information has been obtained by all parties to a 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, to the extent that the submitted information has either been obtained from or provided to Sigma or its representatives, it is not excepted from disclosure under section 552.103(a) and may not be withheld on that basis. However, to the extent that the information at issue has not been obtained from or provided to Sigma or its representatives, it may be withheld from disclosure under section 552.103(a). Furthermore, the applicability of section 552.103(a) ends once litigation has been concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

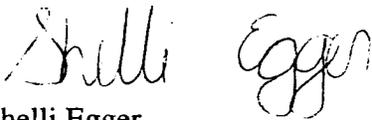
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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 Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

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,



Shelli Egger
Assistant Attorney General
Open Records Division

SE/sdk

Ref: ID# 252040

Enc. Submitted documents

c: Mr. Jack Wilhelm
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(w/o enclosures)