



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 20, 2008

Mr. Mario R. Gutierrez  
General Counsel  
Alamo Area Council of Governments  
8700 Tesoro, Suite 700  
San Antonio, Texas 78217

OR2008-14280

Dear Mr. Gutierrez:

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# 325198.

The Alamo Area Council of Governments (the "council") received a request for all discrimination complaints or reports, as well as all discrimination complaints involving a named individual, for 2005 through 2008. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you inform this office you asked the requestor to clarify the portion of the request regarding all discrimination complaints for 2005 through 2008 to assist in the search for information responsive to this aspect of the request. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You do not indicate the council has received a response to its request for clarification. Thus, we find the council has no obligation at this time to release any information that may be responsive to the request for all discrimination complaints for 2005 through 2008. However, if the requestor responds to the clarification request, the council must seek a ruling from this office before withholding any information responsive to the clarified request, and must comply with the requirements of section 552.301 of the Government Code. *See* Open Records Decision No. 663 at 2-5 (1999) (holding that an appropriate request for clarification under section 552.222(b) merely tolls a governmental body's statutory deadlines under section 552.301 and does not initiate new ten and fifteen business day intervals in which to seek a decision).

You contend the requested discrimination complaint information pertaining to the named individual is protected under section 552.103 of the Government Code, which 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(a), (c). A governmental body 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 was 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).

You state, and provide documentation showing, the council received the request for information after a lawsuit styled *Sherrie Huckabay v. Alamo Area Council of Government and Stephen Ramirez*, Cause No. 332043 was filed in the County Court at Law Number 10 of Bexar County, Texas. Based upon your representation and our review, we conclude

litigation involving the council was pending when the council received the request. You also state the requested discrimination complaints pertaining to the named individual are related to the pending litigation because these documents pertain to the claim that forms the basis of the lawsuit and the requestor is the attorney of record for the plaintiff in the pending lawsuit. Based on your representations and our review, we find the requested information pertaining to the named individual is related to the pending litigation for the purposes of section 552.103. We therefore conclude the council may withhold the requested discrimination complaints involving the named individual under section 552.103 of the Government Code.<sup>2</sup>

We note, however, that once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information at issue that has either been obtained from or provided to all opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure.

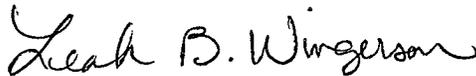
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/ma

Ref: ID# 325198

Enc. Submitted documents

c: Mr. Adam Poncio  
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(w/o enclosures)