



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 31, 2009

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2009-12282

Dear Ms. Smith:

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# 354240 (OR 09-1211).

The Texas Department of Public Safety (the "department") received a request for (1) a specified computer file, (2) information pertaining to a named individual's assignments, and (3) information concerning complaints against another named individual. You state the department has no information responsive to the second item of the request.<sup>1</sup> You state the department will make some of the requested information available to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 provides 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

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<sup>1</sup>The 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).

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 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 on the date the governmental body received the request, 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 552.103(a).

You inform us that the requestor's client filed a claim of discrimination with the Equal Employment Opportunity Commission (the "EEOC") prior to the date of the department's receipt of the present request for information. This office has found that a pending EEOC complaint indicates that litigation is reasonably anticipated. *See* Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). Thus, we agree the department reasonably anticipated litigation on the date it received the present request for information. You argue that the information in Attachment B is related to the anticipated litigation. Upon review, we agree that the information in Attachment B is related to the anticipated litigation for purposes of section 552.103. Therefore, we conclude that section 552.103 is applicable to this information.

We note that the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to the litigation to obtain such information through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). Thus, when the opposing party has seen or had access to information relating to pending litigation, there is no interest in withholding that information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). In this instance, the requestor's client has already seen or had access to most of the information in Attachment B. However, the requestor's client only had access to this information in the usual scope of his employment with the department. Such information is not considered to have been obtained by the opposing party to the litigation and may thus be withheld under

section 552.103. Therefore, the department may withhold the information in Attachment B under section 552.103 of the Government Code. We note that the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Next, section 552.139 of the Government Code provides:

(a) Information is excepted from [disclosure] if it is information that relates to computer network security or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; and

(2) any other assessment of the extent to which data processing operations, a computer, or a computer program, network, system, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information is vulnerable to alteration, damage, or erasure.

Gov't Code § 552.139. You inform us that the information in Attachment D contains "detailed information concerning the structure and operation of the [department's] computer network." Upon review, we agree that the submitted documents contain information pertaining to the design or operation of a computer network. Thus, the department must withhold the information you have highlighted in Attachment D under section 552.139 of the Government Code. However, the remaining information does not relate to computer network security or to the design, operation, or defense of a computer network for purposes of section 552.139. Therefore, the department may not withhold any of the remaining information under section 552.139.

We note the remaining information contains e-mail addresses that may be subject to section 552.137 of the Government Code.<sup>2</sup> Section 552.137 of the Government Code makes certain e-mail addresses confidential, providing the following:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

*Id.* § 552.137. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under section 552.137. Therefore, unless the owners of the e-mail addresses at issue consent to their release, the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code; however, to the extent that any of the marked e-mails belong to employees of an entity with which the department has a contractual relationship, or fall under any of the other exceptions listed under subsection 552.137(c), the department may not withhold these e-mail addresses under section 552.137.

In summary, (1) the department may withhold the information in Attachment B under section 552.103 of the Government Code; (2) the department must withhold the information you have highlighted in Attachment D under section 552.139 of the Government Code; and

(3) unless the owners of the e-mail addresses at issue consent to their release or the e-mail addresses fall under an exception listed in subsection 552.137(c), the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code. The remaining information must be released to the requestor.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 354240

Enc. Submitted documents

c: Requestor  
(w/o enclosures)