



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 23, 2009

Mr. Ronald J. Bounds  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2009-15044

Dear Mr. Bounds:

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# 359231.

The City of Corpus Christi (the "city") received two requests for information related to specified job description questionnaires ("JDQs") and "the list of all city employees that live outside the City's residency requirement of 60 minutes." You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note you have redacted non-responsive information from the submitted information. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Section 552.103 of the Government Code provides in pertinent part:

- (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>We assume 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 those records contain substantially different types of information than that submitted to this office.

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 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 is 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). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

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). This office has stated that a pending complaint with the Equal Employment Opportunity Commission (the "EEOC") indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982).

You have submitted documentation to this office showing that, prior to the city's receipt of the present requests for information, a party (the "charging party") filed a discrimination complaint against the city with the EEOC. You further state that, as of the date the city received the instant requests, this charge remained pending with the EEOC. Based on your representations and our review, we conclude the city reasonably anticipated litigation when it received the requests for information. You also state the submitted information relates to the anticipated litigation because the charging party alleges he was discriminated against in the promotional process related to the JDQs that are the subject of one of the requests, and the charging party complained in an internal grievance that the city was hiring outside the city for supervisory positions. Based on your representations and our review, we find the submitted information is related to the anticipated litigation for purposes of section 552.103.

The requestor argues that the information should be released because the requestor is not involved in the pending litigation and is not related to anyone who works for the city. We

note, however, that if the city releases any of the information at issue to any member of the public, it may not withhold such information under section 552.103. *See* Gov't Code § 552.007 (prohibiting selective disclosure of information); Open Records Decision Nos. 518 at 3, 490 at 2 (1988) (if governmental body voluntarily releases information to one member of public, the exceptions to disclosure in the statutory predecessor to the Act are waived unless information is deemed confidential). Thus, section 552.103 protects the litigation interests of a governmental body regardless of the identity of the requestor. *See* Gov't Code § 552.103(a). In this instance, because the city has satisfied its burden of showing section 552.103 applies, the city may generally withhold the submitted information pursuant to that exception.<sup>2</sup>

We note, however, that once information has been obtained by all parties to the anticipated 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). Thus, 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. Further, the applicability of section 552.103(a) ends when the litigation has concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (1982).

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, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/eeg

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

Ref: ID# 359231

Enc. Submitted documents

c: Requestor  
(w/o enclosures)