



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 12, 2010

Mr. Russell Wilson  
Wilson County Attorney  
1420 Third Street  
Floresville, Texas 78114

OR2010-06788

Dear Mr. Wilson:

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# 379040.

The Wilson County Clerk (the "county clerk") received a request for the names of each clerk working during a specified time, the addresses of two named individuals, and information regarding the presence of a court reporter at a specified proceeding. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you inform us the county clerk has asked the requestor to clarify his request. We note that a governmental body may communicate with a requestor for the purpose of clarifying or narrowing a request for information. *See* Gov't Code § 552.222(b) (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010). However, a governmental body must make a good faith effort to relate a request for information to information that the governmental body holds. *See* Open Records Decision No. 561 at 8 (1990). We understand the county clerk has not received a response to its request for clarification. In this case, as you have submitted responsive information for our review and raised an exception to disclosure for this information, we consider the county clerk to have made a good faith effort

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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.

to identify the information that is responsive to the request, and we will address the applicability of the claimed exception to the submitted information. We further determine the county clerk has no obligation at this time to release any additional information that may be responsive to the part of the request for which it has not received clarification. However, if the requestor responds to the request for clarification, the county clerk must again seek a ruling from this office before withholding any additional responsive information from the requestor. *See City of Dallas*, 304 S.W.3d at 387.

Section 552.103 of the Government Code provides, in relevant 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 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 sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See Open Records Decision No. 452 at 4 (1986).* To demonstrate litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. *See Open Records Decision Nos. 555 (1990), 518 at 5 (1989)* (litigation must be "realistically contemplated"). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps

toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982).

You state on the date the county clerk received the request for information, the requestor threatened litigation against the county clerk. As noted above, a threat of litigation without any objective steps toward filing suit is not sufficient to establish anticipated litigation. You have not provided this office with evidence any objective steps had been taken toward filing a lawsuit against the county clerk prior to the date the county clerk received the request for information. *See* Gov't Code § 552.301(e); Open Records Decision No. 331 (1982). Upon review, therefore, we find you have not established litigation was reasonably anticipated on the date the county clerk received the request for information. Therefore, the county clerk may not withhold the information at issue under section 552.103 of the Government Code. As you raise no further exceptions, the submitted information must be released.

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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/dls

Ref: ID# 379040

Enc. Submitted documents

c: Requestor  
(w/o enclosures)