



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 26, 2010

Ms. Sheri Bryce Dye  
Assistant Criminal District Attorney  
Bexar County  
300 Dolorosa, 4th Floor  
San Antonio, Texas 78205

OR2010-11186

Dear Ms. Dye:

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# 388179.

The Bexar County Community Venues Program (the "county") received a request for eight categories of information pertaining to several named entities and a specific project. You claim 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> We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, in his comments submitted to this office, the requestor suggests the county did not comply with the procedural requirements of the Act in requesting our decision because the county did not request a ruling by the statutory deadline. We understand the requestor to assert the county failed to comply with section 552.301(b) of the Government Code, which requires a governmental body to ask for a decision from this office and state which

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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.

exceptions apply to the requested information by the tenth business day after receiving the request. *Id.* § 552.301(b). The county states it received the request for information on May 7, 2010. Accordingly, the county's ten-business-day deadline was May 21, 2010. The envelope in which the county submitted its request for a ruling request bears a postmark of May 19, 2010. *See id.* § 552.308 (providing ten-day requirement met if request bears post office cancellation mark indicating time within ten-day period). Therefore, we find the county's request for a decision was timely. *See id.* § 552.301(b).

Section 552.103 of the Government Code provides, in 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.

*Id.* § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation is pending or reasonably anticipated on the date the governmental body receives 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, 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.

The question of 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 litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Concrete evidence to support a claim 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. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 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). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

You state, and provide documentation showing, the county received the request for information after a lawsuit styled *Perez Project Consulting, Inc. f/k/a SA Project 1, Inc. v. Southeast Boys Baseball, Inc. d/b/a Southeast Pony Baseball and Softball, and Josephine Ramon, individually*, Cause No. 2010CI-07204, was filed in the 131st District Court of Bexar County, Texas. You assert although the county is not a party to the pending lawsuit, the county reasonably anticipates being added as a defendant in the lawsuit by the plaintiff. You explain the county contracted with the named defendant in the lawsuit for the defendant to construct a sports complex with the aid of county funding. You state, and provide documentation showing, the defendant had to submit requests for payment to the county in order to receive funding to pay the defendant's consultants and contractors it hired to complete the project. You inform us the lawsuit pertains to a claim for payment related to the project that was denied by the county. You have provided letters and e-mails from the requestor, who is the plaintiff's attorney in the pending lawsuit, to the defendant and a county court commissioner discussing the plaintiff's claims, the plaintiff's desire to resolve the dispute through mediation, and the eventual lawsuit. You contend the county anticipates being made part of the lawsuit because some of the requestor's letters and e-mails to the defendant request the presence of a county representative in the mediation negotiations if the defendant believes the county's approval of payment is required. You have not, however, informed us the requestor has actually threatened litigation against the county or otherwise taken any concrete steps toward adding the county as a party to the pending litigation. *See* ORD 331. Furthermore, you acknowledge, and one of the requestor's e-mails to the county commissioner reflects, the requestor's client specifically chose to not include the county as a party when the lawsuit was filed. Consequently, you have not established the county reasonably anticipated litigation when it received the request for information. Accordingly, the county may not withhold any of the submitted information under section 552.103 of the Government Code.

We note the submitted information includes an e-mail address subject to section 552.137 of the Government Code, which excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).<sup>2</sup> *See* Gov't Code § 552.137(a)-(c). The e-mail address at issue is not specifically excluded by section 552.137(c). As such, this e-mail

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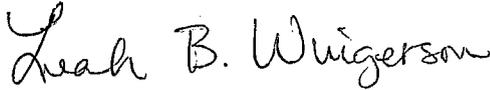
<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

address, which we have marked, must be withheld under section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release.<sup>3</sup> *See id.* § 552.137(b). As you have not claimed any other exceptions to disclosure, the remaining information must be released.<sup>4</sup>

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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 388179

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>4</sup>We note the information being released includes the requestor's client's e-mail address that is generally confidential under section 552.137(a) of the Government Code, to which this requestor has a right of access under section 552.137(b) of the Government Code.