



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2010

Mr. Richard P. Bianchi
County Attorney
Aransas County
301 North Live Oak Street
Rockport, Texas 78382

OR2010-13830

Dear Mr. Bianchi:

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# 393458.

The Aransas County Sheriff's Office (the "sheriff") received a request for (1) the name, date of birth, address, date of hire, and whether the individual was terminated or quit, for all sheriff employees hired from January 1, 2005 to June 30, 2010, and (2) the timesheets for the requestor and another individual. You claim the submitted 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.¹

Initially, we note portions of the submitted information are subject to section 552.022 of the Government Code. This section provides, in pertinent part:

¹We 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 that those records contain substantially different types of information than that submitted to this office.

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]

Gov't Code § 552.022(a)(2). In this instance, the requestor specifically seeks sheriff employees' names and dates of employment. This submitted information is subject to section 552.022(a)(2) of the Government Code, and must be released unless it is confidential under "other law." You argue this information is excepted from disclosure by section 552.103 of the Government Code. Section 552.103 is a discretionary exception to disclosure that a governmental body may waive. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). As such, section 552.103 is not "other law" that makes information expressly confidential for the purposes of section 552.022(a)(2). Thus, the names and dates are subject to section 552.022(a)(2) of the Government Code, and must be released unless confidential under "other law." As you raise no other exceptions to disclosure, this information, which we have marked, must be released. However, we will address your argument under section 552.103 for the remaining information not subject to section 552.022.

Section 552.103 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.

Gov't Code § 552.103(a), (c). The sheriff 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 department 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 sheriff must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, the requestor filed a complaint with the Equal Employment Opportunity Commission (“EEOC”) against the sheriff, alleging discrimination based on gender and age. You represent this complaint was pending on the date the request was received by the sheriff. This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated. See Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). Based on your representations and our review of the submitted EEOC complaint, we agree the sheriff reasonably anticipated litigation on the date it received the present request for information. We also agree the submitted information is related to the EEOC complaint for purposes of section 552.103.

However, 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 ORD 551 at 4-5. Thus, once information is obtained from or provided to all the opposing parties in the anticipated litigation, there is no interest in withholding that information under section 552.103. See Open Records Decision Nos. 349 (1982), 320 (1982). We have marked the submitted timesheet that was created by the requestor, who is the sheriff’s sole opposing party in the pending EEOC claim. Consequently, the marked timesheet may not be withheld under section 552.103, and, as you raise no other exceptions to its disclosure, must be released. However, the sheriff may withhold the remaining submitted information 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).

In summary, the sheriff must release the names, and dates of employment under section 552.022(a)(2) of the Government Code, as well as the timesheet we marked. The remaining information may be withheld under section 552.103 of the Government Code.

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,

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,

A handwritten signature in black ink, appearing to read "Bob Davis", with a long, sweeping tail extending to the right.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 393458

Enc. Submitted documents

c: Requestor
(w/o enclosures)