



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2011

Ms. Vanessa A. Gonzalez
Allison, Bass & Associates, L.L.P.
402 West 12th Street
Austin, Texas 78701

OR2011-07083

Dear Ms. Gonzalez:

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# 418080.

Bandera County (the "county"), which you represent, received a request for three categories of information pertaining to a specified lawsuit, including (1) a copy of the settlement agreement, summary of the settlement agreement, or some other document indicating whether money changed hands, and if so, how much; (2) documentation of the deductible on the insurance claim related to the lawsuit; and (3) a summary of the legal bills incurred by the county and/or its insurer in defending the lawsuit. You state the county will release information responsive to categories two and three of the request. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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). 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).

You state, and provide documentation showing, that a wrongful termination of employment lawsuit against the county was dismissed on March 2, 2011. The county received the operative request for information on March 3, 2011.¹ Based on these representations and our review, we conclude that litigation was not pending when the request for information was received by the county. Furthermore, you have not provided this office with any arguments showing that litigation was reasonably anticipated on the date the request was received. Therefore, the county may not withhold the submitted settlement agreement or mediation proposed settlement agreement (“MPSA”) under section 552.103 of the Government Code. As you raise no further exceptions to disclosure of the settlement agreement, we have marked it for release. However, we will address the county’s claim the MPSA is excepted from disclosure under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. You raise section 552.101 in conjunction with rule CV-88 of the Local Rules for the United States District Court for the Western District of Texas for the MPSA. The Federal Rules of Civil Procedure were adopted pursuant to the Rules Enabling Act, section 2072 of title 28 of the United States Code, which authorizes the United States Supreme Court to promulgate rules of practice and procedure for the federal courts. *See* 28 U.S.C. § 2072(a) (Supreme Court has power to prescribe general rules of practice and procedure for cases in district courts). Pursuant to rule 83 of the Federal Rules of Civil Procedure, a district court “may adopt and amend [local] rules governing its practice.” Fed.

¹Although the county received a request for these documents on March 1, 2011, you state, and provide documentation showing, the requestor withdrew his original request.

R. Civ. P. 83(a)(1). A district court rule adopted pursuant to rule 83 has “the force of law.” *Weil v. Neary*, 278 U.S. 160, 169 (1929); *see also U.S. v. Hvass*, 355 U.S. 570, 575 (1958) (local rules are regarded as “law[s] of the United States” for purposes of perjury statute).

Rule CV-88 provides in pertinent part:

(i) Confidentiality: Except as otherwise provided herein, or as agreed by the participants, a communication relating to the subject matter of any civil or criminal dispute made by any participant during an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, may not be disclosed, may not be used as evidence against the participant in any judicial or administrative proceeding, and does not constitute a waiver of any existing privileges or immunities.

(1) Any record made at an alternative dispute resolution procedure is confidential, and the participants or the third party facilitating the procedure may not be required to testify in any proceedings relating to or arising out of the matter in dispute[.]

(2) An oral communication or written material used in or made a part of an alternative dispute resolution procedure is admissible or discoverable if it is admissible or discoverable independent of the procedure.

W. D. Tex. Loc. R. CV-88(i)(1), (2). You represent the MPSA is a record made at an alternative dispute resolution procedure conducted pursuant to rule CV-88. You do not indicate, nor do the submitted records reflect, that the parties to the alternate dispute resolution procedure have agreed to waive the confidentiality of the MPSA. Based on your representations and our review of the MPSA, we conclude it is confidential under rule CV-88 of the Local Rules for the United States District Court for the Western District of Texas and must be withheld from disclosure on that basis under section 552.101 of the Government Code.

In summary, the settlement agreement must be released. The county must withhold the MPSA under section 552.101 of the Government Code in conjunction with rule CV-88 of the Local Rules for the United States District Court for the Western District of Texas.

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 'KLC', with a long horizontal stroke extending to the right.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eeg

Ref: ID# 418080

Enc. Submitted documents

c: Requestor
(w/o enclosures)