



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 28, 2011

Mr. Vince Ryan  
County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2011-10888

Dear Mr. Ryan:

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# 425911 (C.A. File No. 11PIA0172).

The Harris County Attorney's Office received a request for all information gathered in relation to the investigation of a specified grievance filed by an inmate of the Harris County Detention Center. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the claimed exception 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 purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception applies in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the requested information 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.); ORD 551 at 4. The governmental body must meet both parts of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

You assert the submitted information relates to pending litigation. You state before you received this request, the Harris County Sheriff, Harris County Sheriff's Office, and Sergeant Kenneth Bankhead, all of whom you represent in your capacity as county attorney, were named as defendants in a lawsuit styled *William Solomon Lewis vs. Sergeant Bankhead, Sheriff Adrian Garcia, and Harris County Sheriff's Office*, No. 4:10-CV-04940, which was filed in the United States District Court for the Southern District of Texas, Houston Division. Thus, we find you have established litigation was pending on the date you received the request. However, you did not submit the petition or otherwise explain the subject of the litigation. Further, although you state the pending litigation involves only "some" of the information responsive to the request, you do not identify what information is related to the pending suit or explain how any such information is related. Consequently, you have failed to demonstrate the applicability of section 552.103 to the submitted information. Therefore, you may not withhold any portion of the submitted information under section 552.103 of the Government Code. As you raise no additional exceptions to disclosure, the submitted information must be released to the requestor.

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,

A handwritten signature in cursive script that reads "Misty Haberer Barham".

Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/tf

Ref: ID # 425911

Enc. Submitted documents

c: Requestor  
(w/o enclosures)