



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 30, 2011

Ms. Victoria Phipps  
Attorney for Alamo Community College District  
Littler Mendelson, PC  
1301 McKinney Street, Suite 1900  
Houston, Texas 77010

OR2011-12630

Dear Ms. Phipps:

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# 429969.

The Alamo Community College District (the "district"), which you represent, received a request for four categories of information related to two specified job titles. 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.

Initially, you argue a portion of the request requires the district to answer questions. The Act does not require a governmental body to answer general questions, perform legal research, or create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); *Open Records Decision Nos. 605* at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. *Open Records Decision No. 561* at 8-9 (1990). Therefore, while the district is not required to create a document in response to the questions at issue, documents from which this information may be derived would be responsive to this request. We assume the district has made a good-faith effort to relate the requestor's questions to responsive information. However, we note you have not submitted any such information. Therefore, to the extent such responsive information existed on the date the district received the request, we assume you have released it. *See*

Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. See Gov't Code §§ 552.301(a), .302.

You assert the submitted information is excepted from disclosure by section 552.103 of the Government Code. Section 552.103 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 state, and provide documentation showing, a lawsuit styled *Stephen William Babb v. Alamo Community College District*, C.A. No. SA-10-cv-206-XR, was filed and is currently pending against the district in the United States District Court for the Western District of Texas. We note this lawsuit was filed prior to the district's receipt of the instant request. Therefore, we agree litigation was pending on the date the district received the request for information. You also state the information at issue pertains to the substance of the lawsuit claims. Based on your representations and our review, we find the submitted information is related to the pending litigation. Therefore, the district may withhold the submitted information under section 552.103 of the Government Code.

We note once the information at issue has been obtained by all parties to the anticipated litigation through discovery or otherwise, a section 552.103(a) interest no longer exists as to that information. See Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all other parties in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. The applicability of section 552.103(a) also ends once the litigation has been concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/agn

Ref: ID # 429969

Enc. Submitted documents

c: Requestor  
(w/o enclosures)