



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2011

Ms. Kirsten B. Cohoon
City Attorney
City of Boerne
P.O. Box 1677
Boerne, Texas 78006-6677

OR2011-14666

Dear Ms. Cohoon:

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# 432625.

The City of Boerne (the "city") received a request for the police incident report pertaining to a specified incident involving the requestor's daughter, training and salary records of all officers involved in the specified incident, and records regarding particular training for officers prior to the date of the specified incident. You claim the submitted incident report, training records, and salary records are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. 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).

Section 552.103 of the Government Code provides:

(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). 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 that (1) litigation was 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

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. Open Records Decision No. 452 at 4 (1986). This office has concluded a governmental body's receipt of a claim letter it represents to be in compliance with the notice requirements of the Texas Tort Claims Act (the "TTCA"), chapter 101 of the Civil Practice and Remedies Code, is sufficient to establish litigation is reasonably anticipated. If that representation is not made, the receipt of the claim letter is a factor we will consider in determining, from the totality of the circumstances presented, whether the governmental body has established litigation is reasonably anticipated. *See* Open Records Decision No. 638 at 4 (1996). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* ORD 452 at 4.

You state, and provide documentation showing, the city received the request for information on July 27, 2011. You further state, and provide documentation showing, that on August 3, 2011, the city received from the requestor a notice of claim letter, which you represent complies with the requirements of the TTCA. Based on the city's receipt of this letter, you claim the city reasonably anticipates litigation. We note, however, the letter was received by the city after the city received the request for information. Furthermore, you have not provided any arguments or explanation regarding why the city reasonably anticipated litigation on the date of the request. Thus, you have failed to demonstrate the city reasonably anticipated litigation on the date the city received the request for information. Consequently, the city may not withhold the submitted information under section 552.103

of the Government Code. As you have not claimed any other exceptions to disclosure, the city must release the submitted information.¹

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 432625

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the information to be released contains information pertaining to the requestor's minor child that may be confidential with respect to the general public under common-law privacy. As the child's authorized representative, the requestor has a right to her child's private information pursuant to section 552.023 of the Government Code. Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). If the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.