



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 18, 2011

Ms. Charlotte A. Towe  
Assistant General Counsel  
Office of the General Counsel  
Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2011-17080

Dear Ms. Towe:

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# 436987.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a specified accident involving a named inmate. You state some of the requested information has been or will be made available to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.134(a) of the Government Code relates to inmates of the department and provides:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Section 552.134 is explicitly made subject to section 552.029, which provides in relevant part the following:

Notwithstanding Section . . . 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021:

- (1) the inmate's name, identification number, age, birthplace, department photograph, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate[.]

*Id.* § 552.029(1). Upon review, we conclude section 552.134(a) is generally applicable to the submitted information. We note, however, some of the submitted information pertains to injuries suffered by the named inmate and is therefore subject to section 552.029(1). *See id.* The department must withhold the remaining information pursuant to section 552.134 of the Government Code.<sup>1</sup> Because you also raise section 552.103 of the Government Code, we will address your argument under this section for the information subject to section 552.029(1).

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.

*Id.* § 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 was pending or reasonably anticipated when the governmental body received the request for information, and

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

(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).

In order to establish that litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* ORD 452 at 4. In Open Records Decision No. 638 (1996), this office stated that a governmental body has met its burden of showing that litigation is reasonably anticipated when it received a notice of claim letter and the governmental body represents that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act (“TTCA”), chapter 101 of the Texas Civil Practice & Remedies Code, or an applicable municipal ordinance.

You represent, and provide documentation showing, that simultaneous with the instant request, the department received a notice of claim letter from the requestor. You state this letter is in compliance with the TTCA. Based on your representations and our review, we find litigation was reasonably anticipated on the date the department received the request for information. Further, we agree that the information at issue relates to the anticipated litigation. Therefore, we find the information subject to section 552.029(1) of the Government Code pertains to litigation that was reasonably anticipated on the date the request for information was received. Accordingly, the department may withhold this information under section 552.103 of the Government Code.

However, we note that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Further, the applicability of section 552.103(a) ends once the litigation has been concluded or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, with the exception of the information subject to section 552.029(1) of the Government Code, the department must withhold the submitted information under section 552.134 of the Government Code. The department may withhold the information subject to section 552.029(1) of the Government Code 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](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 'Nneka Kanu', written in a cursive style.

Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/em

Ref: ID# 436987

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)