



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 15, 2012

Mr. Gerard A. Calderon
Assistant Criminal District Attorney
Bexar County
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205

OR2012-02352

Dear Mr. Calderon:

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# 445476.

The Bexar County Constable's Office, Precinct 3 (the "constable's office"), received a request for certain policy manuals and for information related to a named officer, including the following: (1) complaints against the officer; (2) disciplinary investigations of the officer; (3) the officer's age, law enforcement background, and previous employment; (4) arrests, stops, and detentions made by the officer; (5) video recordings from the officer's patrol car during a particular time period; (6) the officer's cellular telephone records, work schedule, time card, sign-in sheets, and dispatch narratives for the same time period; (7) radio dispatch narratives for the officer's unit for a specified date; and (8) a copy of the officer's employment application. You claim the requested information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

¹Although you also raise sections 552.101 and 552.108 of the Government Code, you have not presented arguments explaining how these exceptions apply to the submitted information, as required by section 552.301. Thus, we assume you have withdrawn these claims. See Gov't Code §§ 552.301(e)(1)(A), .302.

Initially, we note you have not submitted for our review any information responsive to the request for policy manuals; complaints against the officer; disciplinary investigations of the officer; arrests, stops, and detentions made by the officer; video recordings from the officer's patrol car during a particular time period; the officer's cellular telephone records, work schedule, time card, sign-in sheets, and dispatch narratives for the same time period; and radio dispatch narratives for the officer's unit for a specified date. Although you state the constable's office submitted a representative sample of information, no portion of the submitted representative sample pertains to the above-referenced categories of information. Thus, we find the submitted information is not representative of the information sought in these parts of the request. Please be advised this open records letter applies to only the types of information you have submitted for our review. Therefore, this letter ruling does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). To the extent records responsive to the remaining categories of requested information existed when the request was received, we assume you have released them. If you have not released any such information, you must do so at this time. *See id.* §§ 552.301, .302; *see also* 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).

Section 552.103 of the Government Code provides in pertinent 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). *See* ORD 551 at 4.

In order to demonstrate that litigation is reasonably anticipated, the governmental body must provide this office “concrete evidence showing that the claim that litigation might ensue is more than a mere conjecture.” Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* We note that the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. *See* Open Records Decision No. 361 (1983). In Open Records Decision 638 (1996), this office stated that, when a governmental body receives a notice of claim letter, it can meet its burden of showing that litigation is reasonably anticipated by representing that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act (the “TTCA”), Civil Practice and Remedies Code, chapter 101, or an applicable municipal ordinance. 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* ORD 638 at 4.

You state, and provide documentation showing, Bexar County received a notice of injury from the requestor, who asserts a claim against a constable’s office deputy acting in his official capacity. You do not affirmatively represent to this office that the notice of claim complies with the TTCA or an applicable ordinance; therefore, we will only consider the claim as a factor in determining whether the constable’s office reasonably anticipated litigation over the incident in question. Nevertheless, based on your representations, our review of the submitted information, and the totality of the circumstances, we determine the constable’s office has established it reasonably anticipated litigation on the date it received the request for information. We also find the information at issue is related to the anticipated litigation for purposes of section 552.103. Accordingly, the constable’s office may withhold the submitted information under section 552.103 of the Government Code.

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



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 445476

Enc. Submitted documents

c: Requestor
(w/o enclosures)