



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 16, 2012

Honorable Patricia Harless  
State Representative, District 126  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Mr. Ross Giesinger  
Legislative Counsel  
Texas Legislative Council  
P.O. Box 12128  
Austin, Texas 78711-2128

OR2012-03890

Dear Representative Harless and Mr. Giesinger:

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# 448012.

The Office of Representative Patricia Harless (the "representative's office") received a request for all documents, including e-mails, regarding the topic of voter photo identification or new laws or proposals to require photo identification of voters. You state the representative's office has released some of the information. You state the representative's office has withheld some of the information pursuant to chapter 306 of the Government

Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.106, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered arguments submitted by the Office of the Attorney General (the "OAG"). See Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released).

Initially, you have marked portions of sentences within documents F and G to indicate some of the submitted information is not responsive to the present request because it references issues other than voter identification laws. However, this information is within otherwise responsive e-mail messages and, thus, is responsive to the request for information. Accordingly, we will consider your and the OAG's arguments against disclosure of this and the remaining information.

You and the OAG each raise section 552.103 of the Government Code, which provides in 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). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate 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 the pending or anticipated litigation. See *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481

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<sup>1</sup>Information that is subject to section 306.004(a) is governed by chapter 306 of the Government Code, not the Act, and is within the discretion of the legislator to either withhold or release such information. See Gov't Code § 306.004; Open Records Decision No. 648 at 3-7 (1996).

(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 from disclosure 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). In the context of anticipated litigation in which the governmental body is the prospective plaintiff, the concrete evidence must at least reflect that litigation is “realistically contemplated.” *See* Open Records Decision No. 518 at 5 (1989); *see also* Attorney General Opinion MW-575 (1982) (finding that investigatory file may be withheld from disclosure if governmental body attorney determines that it should be withheld pursuant to section 552.103 and that litigation is “reasonably likely to result”). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* ORD 452 at 4.

You and the OAG state the United States Department of Justice is currently reviewing Senate Bill 14, the voter identification statute at issue, under the federal Voting Rights Act of 1965. The OAG also states, on the date the representative’s office received the present request for information, the OAG anticipated filing suit on behalf of the State of Texas (the “state”) in federal court regarding the statute at issue. Further, the OAG explains it is working on this issue with the Office of the Governor, other states agencies, and members of the Texas State Legislature on behalf of the state. Thus, we find there was anticipated litigation on the date the representative’s office received the present request for information. Additionally, we agree the submitted information relates to the anticipated litigation. Accordingly, we conclude the submitted information may be withheld under section 552.103 of the Government Code. As our ruling is dispositive, we need not address the representative’s office’s remaining arguments.

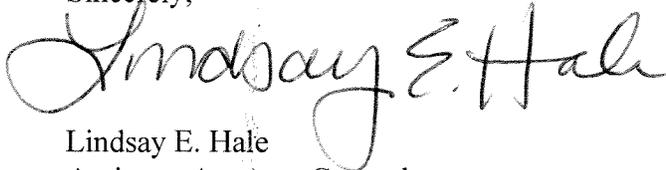
We note that once the information has been obtained by all parties to the anticipated litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note that the applicability of section 552.103(a) ends when the litigation is concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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 that reads "Lindsay E. Hale". The signature is written in a cursive style with a large, looped initial "L".

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/ag

Ref: ID# 448012

Enc. Submitted documents

c: Requestor  
(w/o enclosures)