



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 22, 2012

Ms. Ruth H. Soucy
Deputy General Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2012-04237

Dear Ms. Soucy:

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# 448290 (Comptroller ID#s 7868303333, 7870979301, 7887363818, 7897423560).

The Texas Comptroller of Public Accounts (the "comptroller's office") received four requests from the same requestor for multiple categories of information related to Formula One Racing.¹ You state you have released some of the requested information. You inform us some of the requested information is the subject of prior open records letter rulings. You claim that the requested information is excepted from disclosure under sections 552.103, 552.106, 552.107, and 552.111 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.²

¹You note that the comptroller received clarification of one of the requests for information. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, you state the comptroller's office will rely on Open Records Letter Nos. 2012-01350 (2012), 2011-14068 (2011), 2011-04868 (2011), and 2010-12298 (2010) to withhold portions of the responsive information. As we have no indication that the law, facts, or circumstances on which the prior rulings were based have changed, we agree the comptroller's office may continue to rely on these rulings as previous determinations and withhold or release any previously ruled upon information in accordance with these prior rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.103 of the Government Code provides in part as follows:

(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.). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* Open Records Decision No. 551 at 4 (1990). The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* This office has also found litigation was reasonably anticipated where the opposing party threatened to sue on several occasions and hired an attorney. *See* Open

Records Decision No. 288 (1981). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982).

You inform us, and provide documentation showing, a lawsuit was filed against the comptroller's office regarding Formula One Racing and the Major Events Trust Fund prior to the date the comptroller's office received the instant requests for information. You state the lawsuit resulted in a nonsuit without prejudice to its refiling. Further, you state, and provide news media articles reflecting, the attorney of record in the lawsuit at issue has publicly announced on multiple occasions that he could re-file the lawsuit. You note the attorney for the plaintiffs in the anticipated litigation made these announcements before the instant requests for information were received. Based on your representations and our review, we conclude the comptroller's office has established that litigation was reasonably anticipated when the comptroller's office received the instant requests for information. You state, and we agree, the submitted information is related to the anticipated litigation. Accordingly, we find the submitted information may be withheld under section 552.103 of the Government Code.³

We note, however, once 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 Nos. 349 (1982), 320 (1982). Also, the applicability of section 552.103(a) ends when the litigation has concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (1982).

In summary, the comptroller's office may continue to rely on Open Records Letter Nos. 2012-01350 (2012), 2011-14068 (2011), 2011-04868 (2011), and 2010-12298 (2010) as previous determinations and withhold or release any previously ruled upon information in accordance with these prior rulings. The comptroller's office may withhold the submitted information 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, or call the Office of the Attorney General's Open Government Hotline, toll free,

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 'VB', with a long horizontal flourish extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 448290

Enc. Submitted documents

c: Requestor
(w/o enclosures)