



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 4, 2012

Ms. Myrna S. Reingold  
Galveston County Legal Department  
722 Moody, 5th Floor  
Galveston, Texas 77550-2317

OR2012-06571

Dear Ms. Reingold:

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# 452576.

The Galveston County Legal Department (the "county") received a request for the audit report most recently prepared by or for the county and e-mails pertaining to audit procedures, the conduct of any audit, or any audit report, written or received by a named former county employee during a specified time period. You state the county has released some of the responsive information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103, 552.116, 552.117, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address section 552.116 of the Government Code. Section 552.116 of the Government Code provides as follows:

- (a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper

is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You assert some of the submitted information, which you have marked, constitutes audit working papers under section 552.116. You state the county's auditor's office is charged with performing audits of various county offices and departments pursuant to state law. *See* Local Gov't Code §§ 112.002, .005, .006., .007, .009, .031, .051; 114.001, .002, .003, .022, .023, .024, .025, .043. You state the information at issue includes working papers of a county auditor in the performance of state-required duties, which include the performance of audits. Upon review, we agree most of the information you marked consists of audit working papers as defined by section 552.116(b). However, we find some of the information you marked deals primarily with personnel matters of the county. Thus, we find you have failed to demonstrate how this information, which we have marked, consists of information "prepared or maintained in conducting an audit or preparing an audit report" within the meaning of section 552.116(b)(2). Accordingly, with the exception of the information we marked, the county may withhold the information you marked under section 552.116(a) of the Government Code.<sup>1</sup>

You claim section 552.103 of the Government Code for the remaining submitted information. Section 552.103 provides, in relevant part:

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<sup>1</sup>As our ruling is dispositive with respect to this information, we need not address your arguments under sections 552.130 and 552.136 of the Government Code.

(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 sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

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 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 found a pending complaint with the Equal Opportunity Employment Commission ("EEOC") indicates litigation is reasonably anticipated. *See* Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982), 281 at 1 (1981).

You state, and provide documentation showing, prior to the county's receipt of the instant request for information, the named former employee filed discrimination claims against the county with the EEOC. We note although the EEOC had concluded its investigation and issued a right-to-sue letter prior to the county's receipt of the request for information, the 90-day period in which the complainant has a right to sue had not expired when the county received the request. Based on your representations and our review of the information at issue, we find the county reasonably anticipated litigation on the date this request was received. You also state the remaining information pertains to the substance of the anticipated litigation. Based on your representations and our review, we find the remaining information is related to the anticipated litigation. Therefore, section 552.103 is generally applicable to the remaining information.

We note, however, the opposing party has seen or had access to most of the information at issue. The purpose of section 552.103 of the Government Code is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to the litigation to obtain such information through discovery procedures. *See* ORD 551 at 4-5 (1990). Thus, once the opposing party in anticipated litigation has seen or had access to information that is related to the litigation, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We have marked the portions of the remaining information that the opposing party to the litigation has not seen or had access to, and the county may withhold this marked information under section 552.103 of the Government Code. We note the applicability of section 552.103 ends once the related litigation concludes or is no longer anticipated. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). The remaining information the opposing party has seen or had access to may not be withheld under section 552.103, and we will address the applicability of other exceptions to disclosure of this information.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the county must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, if the individual at issue did not timely request confidentiality under section 552.024, the county may not withhold the marked information under section 552.117(a)(1). You have not demonstrated how the remaining information you marked consists of the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of the county, and it may not be withheld under section 552.117(a)(1).

Section 552.137 of the Government Code. excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the county must

withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners have affirmatively consented to their public disclosure.

In summary, with the exception of the information we marked, the county may withhold the information you marked under section 552.116(a) of the Government Code. The county may withhold the information we marked under section 552.103 of the Government Code. The county must withhold the information we marked under section 552.117(a)(1) of the Government Code, if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code. The county must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners have affirmatively consented to their public disclosure. The remaining submitted information must be released.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 452576

Enc. Submitted documents

c: Requestor  
(w/o enclosures)