



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 20, 2012

Ms. Holly C. Lytle  
Assistant County Attorney  
El Paso County  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2012-13084

Dear Ms. Lytle:

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# 462416.

El Paso County, the El Paso County Attorney's Office, and an El Paso County Judge's Office (collectively, the "county") received a request for four categories of information pertaining to materials referencing two named entities and two named individuals, as well as all materials referencing any federal investigation or prosecution of two other named individuals, from a specified time period. You state the county will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

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

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Civil Procedure 192.5, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision No. 676 at 1-2 (2002). Further, in this instance, the proper exceptions to raise when asserting the work product privilege for information not subject to section 552.022 of the Government Code is section 552.111. *See id.*, Open Records Decision No. 677 (2002).

(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 to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request, 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). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103.

You inform us, and have provided documentation showing, that a lawsuit, styled *El Paso County v. LKG Enterprises Inc. d/b/a LKG, Inc. and Ruben Garcia a/k/a Ruben Garcia Jr., Individually and d/b/a LKG, Inc.*, Cause No. 2007-5484, was pending in the 168th District Court for El Paso County prior to the county's receipt of the instant request for information. You state the submitted information is related to the pending lawsuit. Based on your representations and our review, we agree that litigation to which the county is a party was pending on the date the county received the request. We further find that the submitted information relates to the pending litigation. Therefore, the county may withhold the submitted information under section 552.103 of the Government Code.<sup>2</sup>

We note that once the information has been obtained by all parties to the pending 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* (1982).

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/bhf

Ref: ID# 462416

Enc. Submitted documents

c: Requestor  
(w/o enclosures)