



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 18, 2012

Mr. Joe Whitener  
Director Human Resources  
City of Jasper  
P.O. Box 610  
Jasper, Texas 75951

OR2012-14830

Dear Mr. Whitener:

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# 465195.

The City of Jasper (the "city") received two requests from the same requestor for filings, documents, communications, and e-mails regarding the Equal Employment Opportunity Commission ("EEOC") claims of six named individuals made on behalf of the city to the EEOC. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note the submitted information contains job postings and information given to job applicants, which are subject to disclosure under section 552.022 of the Government Code. Section 552.022(a)(15) provides for required public disclosure of "information regarded as open to the public under an agency's policies[.]" unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(15). Because the city makes job postings available on its website, we find the submitted job postings are regarded as open to the public under the city's policies and are therefore subject to section 552.022(a)(15). Further, because you provided the remaining information at issue to the applicants to the job postings, we find that information was likewise open to the public under the city's policies pursuant to section 552.022(a)(15). Although you claim an exception to disclosure under section 552.103 of the Government Code, that section is a discretionary exception that protects a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999,

no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally). As such, section 552.103 does not make information confidential for purposes of section 552.022(a)(15). Therefore, the submitted job postings and information provided to the job applicants may not be withheld under section 552.103 of the Government Code and must be released pursuant to section 552.022(a)(15) of the Government Code.

Section 552.103 of the Government Code provides, in relevant 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 has the burden of providing relevant facts and documents to show that the section 552.103(a) exception applies in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the requested information is related to that litigation. *See 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 parts of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish that litigation is reasonably anticipated, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *Id.* This office has stated that a pending Equal Employment Opportunity Commission ("EEOC") complaint indicates that litigation is reasonably anticipated. *See* Open Records Decision Nos. 386 at 2 (1983), 336 at 1(1982).

You have submitted information to this office showing that, prior to the city's receipt of the instant request, the requestor's client filed an EEOC complaint against the city. You state the submitted information is directly related to the substance of the EEOC complaint. Based

on your representations and our review, we find you have demonstrated the information at issue is related to litigation that was reasonably anticipated at the time the city received the request for information. Accordingly, section 552.103 generally applies to the remaining information.

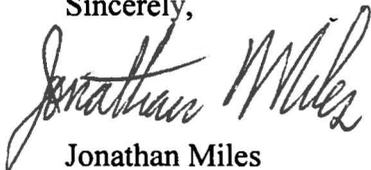
We note, however, it appears the opposing party has seen or had access to the some of the submitted information. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to the litigation to obtain such information through discovery procedures. *See* ORD 551 at 4-5 (1990). Thus, once the opposing party 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). Accordingly, the information seen by the opposing party, which we have marked, may not be withheld under section 552.103. However, with the exception of any other information the opposing party has already seen or had access to, the remaining information may be withheld under section 552.103 of the Government Code. We note the applicability of section 552.103 also ends once the related litigation concludes or is no longer anticipated. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the city must release the submitted job postings and information provided to the job applicants pursuant to section 552.022(a)(15) of the Government Code. With the exception of any information the opposing party has seen or had access to, the remaining information may be withheld 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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/bhf

Ref: ID# 465195

Enc. Submitted documents

c: Requestor  
(w/o enclosures)