



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 28, 2012

Mr. W. Lee Auvenshine
Assistant Ellis County and District Attorney
Ellis County and District Attorney's Office
109 South Jackson
Waxahachie, Texas 75165

OR2012-15515

Dear Mr. Auvenshine:

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# 466314.

The Ellis County and District Attorney's Office (the "county and district attorney's office") received a request for "all bills, invoices, and records regarding Ellis County's relationship with Information Capital Enterprises."¹ You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. You also believe release of the information at issue may implicate the interests of Local Government Solutions, L.P.; Government Service Automation, Inc.; and Indigent Health Care Solutions. Accordingly, you state the county and district attorney's office has notified these third parties of the request and of their right to submit arguments to this office. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

¹The county and district attorney's office informs us it does not possess any documents pertaining to an entity identified as Information Capital Enterprises. However, the county and district attorney's office does possess documents pertaining to "entities apparently affiliated with Information Capital Enterprises," which it has submitted to this office as information responsive to the request.

Initially, we note the submitted information contains minutes of public meetings. The agendas and minutes of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See* Gov't Code §§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying on request to governmental body's chief administrative officer or officer's designee), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). Although you seek to withhold this information under sections 552.103 and 552.107, as a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the submitted minutes of the public meetings, which we have marked, must be released pursuant to section 551.022 of the Government Code.

We next note the submitted information contains minute orders. Because laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See* Open Records Decision No. 221 at 1 (1979) ("official records of the public proceedings of a governmental body are among the most open of records"); *see also* Open Records Decision No. 551 at 2-3 (1990) (laws or ordinances are open records). The minute orders appear to have been adopted at a public meeting of the Ellis County Commissioners and thus are official records of the public proceedings of a governmental body. As such, the minute orders, which we have marked, must be released. *See* ORD 221 at 1 ("official records of the public proceedings of a governmental body are among the most open of records").

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the interested third parties has submitted to this office any reasons explaining why the requested information should not be released. We thus have no basis for concluding any portion of the submitted information constitutes proprietary information of any of the interested third parties. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, we conclude the county and district attorney's office may not withhold any of the submitted information on that basis of any interest the third parties may have in the information.

Section 552.103 of the Government Code, the "litigation exception," 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 at issue. To meet this burden, the governmental body must demonstrate that (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 the pending or anticipated 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).*

You assert the remaining information is subject to section 552.103. You state the information at issue pertains to the termination of a former Ellis County (the "county") employee. You inform us that before the district and county attorney's office received the instant request for information, an attorney for the former county employee submitted a demand letter, asserted the county violated the state Whistleblower's Act, and demanded that the employee be reinstated. Based on your representations and our review, we find the county and district attorney's office reasonably anticipated litigation on the date it received the request for information. We also find the remaining information is related to the anticipated litigation. Accordingly, the county and district attorney's office may withhold the remaining information under section 552.103 of the Government Code.²

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

In summary, the county and district attorney's office must release the public meeting minutes we have marked pursuant to section 551.022 of the Government Code and must release the

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

minute orders we have marked as official records of the public proceedings of a governmental body. The county and district attorney's office may withhold the remaining 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, 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# 466314

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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