



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2013

Ms. Lucinda J. Garcia
Counsel for Coastal Bend Workforce Development Board
Wood, Boykin & Wolter, P.C.
615 North Upper Broadway, Suite 1100
Corpus Christi, Texas 78401-0748

OR2013-07603

Dear Ms. Garcia:

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# 486680.

The Coastal Bend Workforce Development Board (the "board"), which you represent, received the following two requests for information: (1) a request for copies of any communications sent by a named individual "to and/or received" by another named individual that pertains to, references, or alludes to the requestor and (2) a request from the same requestor for all communications that mention or relate, refer, allude, or pertain to the requestor that were sent or received by any of four named individuals. You state the board released some of the requested information. You claim some of the submitted 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.

Initially, you state, and provide documentation demonstrating, the requestor provided clarifications of his requests. The board subsequently asked the requestor for further clarification of one of the requests for information. *See Gov't Code § 552.222* (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). You inform us the requestor has not responded to this request for clarification. However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See Open Records Decision No. 561 at 8* (1990). In this case, as you have submitted information responsive to a portion of this request for our review and raised an exception to

disclosure for this information, we consider the board has made a good-faith effort to identify information that is responsive to this request, and we will address the applicability of the claimed exception to the submitted information. We further determine the board has no obligation at this time to release any additional information that may be responsive to the portion of the request for which the board has not received clarification. However, if the requestor responds to the request for clarification, the board must seek a ruling from this office before withholding any additional responsive information from the requestor. *See City of Dallas*, 304 S.W.3d at 387.

Section 552.103 of the Government Code 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 that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date the governmental body received 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, 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 from disclosure under section 552.103(a). *See Open Records Decision No. 551 at 4 (1990)*.

You state, and provide documentation demonstrating, the requestor filed a lawsuit against the board styled *Bates v. Coastal Bend Workforce Development Board*, Civ No. 2:13-cv-0036, in the United States District Court for the Southern District of Texas before the board received the present requests for information. In his lawsuit, the requestor claims the board violated the Fair Labor Standards Act during his employment with the board. We understand the lawsuit is currently pending. Based upon your representations and our review, we find litigation involving the board was pending on the date the board received the requests.

Further, you state, and we agree, the information in Exhibit 7 relates to the pending litigation. Accordingly, we conclude the board may withhold the information in Exhibit 7 under section 552.103 of the Government Code.

We note 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 the applicability of section 552.103(a) ends when the litigation is concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

We note the remaining information contains e-mail addresses of members of the public that are subject to section 552.137 of the Government Code.¹ Section 552.137 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). Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail addresses we have marked are not of the types specifically excluded by section 552.137(c). Accordingly, the board must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the e-mail addresses affirmatively consent to their release.²

In summary, the board may withhold the information in Exhibit 7 under section 552.103 of the Government Code. The board must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release. The board must release the remaining information.³

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the requestor has a right of access to his own personal e-mail address in the information that is being released. See Gov't Code § 552.137(b) (personal e-mail address of member of public may be disclosed if owner of address affirmatively consents to its disclosure). As previously noted, in relevant part, Open Records Decision No. 684 authorizes the board to withhold an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. Thus, if the board receives another request for this same information from a person who does not have such a right of access, Open Records Decision No. 684 authorizes the board to redact this requestor's personal e-mail address. See ORD 684.

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large, looped initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 486680

Enc. Submitted documents

c: Requestor
(w/o enclosures)