



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2013

Mr. Benjamin V. Lugg
Attorney
San Antonio Housing Authority
P.O. Box 1300
San Antonio, Texas 78295-1300

OR2013-07629

Dear Mr. Lugg:

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# 486920.

The San Antonio Housing Authority (the "authority") received a request for the pay grade, age, starting salary, current salary, salary history, highest level of education, and years of employment with the authority for thirteen named employees. You claim 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, we note portions of the submitted information, which we have marked, are not responsive to the instant request because the requestor did not ask for this type of information. This ruling does not address the public availability of non-responsive information, and the authority is not required to release non-responsive information in response to this request.

Next, we note the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body are expressly public under section 552.022(a)(2) of the Government Code and may not be withheld unless made confidential under the Act or other law. *See* Gov't Code § 552.022(a)(2). Section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *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 section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 does not make information confidential. Accordingly, the authority

may not withhold the names, salaries, and dates of service of the employees at issue, which we have marked, under section 552.103 of the Government Code. As you raise no other exceptions for this information, it must be released.

Section 552.103 of the Government Code provides:

(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). The governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information, 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). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). See ORD 551 at 4.

You state, and provide documentation showing, that prior to the authority's receipt of this request, a lawsuit styled *Dolores Mueller v. Humana Insurance Company and San Antonio Housing Authority*, Cause No. 376765, was filed and is currently pending in the County Court at Law No. 3 of Bexar County, Texas. Furthermore, you state the requestor has filed a discrimination charge with the Equal Employment Opportunity Commission (the "EEOC") as a result of alleged retaliation against her for filing the lawsuit. Based on these representations and our review of the submitted information, we determine litigation involving the authority was pending when the authority received the request. We also find the information at issue relates to the pending litigation for purposes of section 552.103. Accordingly, we agree the authority may withhold, pursuant to section 552.103 of the Government Code, the submitted information that is not subject to section 552.022.

We note, however, once the information at issue has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information obtained from or provided to all other parties in the litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the authority must release the names, salaries, and dates of employment of the employees at issue. The authority may withhold the remaining responsive 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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 486920

Enc. Submitted documents

c: Requestor
(w/o enclosures)