



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2014

Ms. Crystal Koonce
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2014-00765

Dear Ms. Koonce:

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# 510850.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident and address as well as specified policies. You claim some of the submitted information is excepted from disclosure under section 552.130 of the Government Code. We also note you have notified the City of Leander (the "city") of its right to submit comments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested part may submit written comments regarding availability of requested information). We have received comments from the city. We have considered the submitted arguments and reviewed the submitted information.

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

- (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.

Id. § 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, orig. proceeding); *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).

To establish that litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* In Open Records Decision No. 638 (1996), this office stated that a governmental body has met its burden of showing that litigation is reasonably anticipated when it received a notice of claim letter and the governmental body represents that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act (“TTCA”), Civ. Prac. & Rem. Code, ch. 101, or an applicable municipal ordinance.

In situations such as this, in which the governmental body that received the request has no litigation interest in the information at issue, we require a representation from the governmental body whose litigation interests are at stake. The city asserts the information at issue is excepted under section 552.103. The city informs us, and submits documentation showing, that prior to the present request for information, the city received a notice of claim letter that complies with the requirements of the TTCA. Based on these representations and our review, we find the city reasonably anticipated litigation at the time of the request. Additionally, the city states, and we agree, the information at issue is related to the incident that forms the basis of the anticipated litigation. Therefore, the sheriff’s office may withhold the submitted information under section 552.103 of the Government Code on behalf of the city.¹

We note that once the information has been obtained by all parties to the anticipated 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

¹As our ruling is dispositive, we need not address the remaining argument against disclosure.

reasonable anticipated. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (1982).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/tch

Ref: ID# 510850

Enc. Submitted documents

cc: Requestor
(w/o enclosures)