



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 23, 2014

Mr. Henry W. Prejean  
Of Counsel/Chief Civil Attorney  
Williamson County Attorney's Office  
405 Martin Luther King Street, Box 7  
Georgetown, Texas 78626

OR2014-10697

Dear Mr. Prejean:

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# 526650.

The Office of the Williamson County Judge (the "county") received a request for the personnel file of the requestor's client, a former deputy with the Williamson County Sheriff's Office (the "sheriff's office"), and a specified policy. You claim the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered your claim and reviewed the submitted information, which you assert is a representative sample.

Initially, you inform our office the county does not have the personnel file of the requestor's client generated or maintained by the sheriff's office.<sup>1</sup> You state the instant request was directed to the county, which is not the custodian of records compiled or maintained by the sheriff's office. You state this portion of the requested information is maintained by the sheriff's office. Section 552.201(b) of the Government Code provides that "[e]ach elected county officer is the officer for public information and the custodian, as defined by Section 201.003, Local Government Code, of the information created or received by that county officer's office." Gov't Code § 552.201(b). You represent that the proper custodian for the sheriff's office personnel file is the sheriff's office. Based on your representations, we conclude that because the county does not maintain portions of the requested information and is not the proper custodian of such information, the Act does not require the county to

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<sup>1</sup>The Act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499.

respond to that portion of the request. This ruling only reaches the information that the county maintains, which you have marked as Exhibit C.

Next, we note Exhibit C consists only of a representative sample of personnel records (related to compensation and benefits) from the county's human resources department. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office. Thus, to the extent any information responsive to the request for the specified policy existed and was maintained by the county on the date the county received the request, we assume you have released it. If you have not released any such information to the requestor, you must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (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 that 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).

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving

a specific matter is realistically contemplated and is more than mere conjecture. *Id.* This office has found a pending complaint with the Equal Employment Opportunity Commission ("EEOC") indicates litigation is reasonably anticipated. *See* Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982), 281 at 1 (1981).

You state, and provide documentation showing, prior to the county's receipt of the instant request, a claim of discrimination was filed against the county and the sheriff's office with the EEOC. Based on your argument and our review of the information at issue, we find the county reasonably anticipated litigation on the date this request was received. You also state the information at issue pertains to the discrimination claim. Based on your representation and our review, we find the information at issue is related to the anticipated litigation. Therefore, the county may withhold the information it has marked as Exhibit C 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 526650

Enc. Submitted documents

c: Requestor  
(w/o enclosures)