



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 21, 2014

Ms. Myrna S. Reingold  
Legal Department  
Galveston County  
722 Moody Street, 5<sup>th</sup> Floor  
Galveston, Texas 77550

OR2014-12589

Dear Ms. Reingold:

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# 529787.

The Galveston County Engineers Office (the "county") received two requests from the same requestor for information pertaining to complaints alleging violations of county floodplain management regulations in the Bluewater 2 subdivision on Bolivar Peninsula. You state the county released some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.103, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

The requestor asserts he has a right of access to the submitted information under the Sixth Amendment of the United States Constitution (the "Sixth Amendment"). The Sixth Amendment states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the

accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. Const. Amend. VI. Thus, in our system of justice, the Sixth Amendment provides the accused in “all criminal prosecutions” is entitled to certain rights, including the right to counsel, the right to be informed of the nature and cause of the accusation, the right to compulsory process to obtain defense witnesses, and the opportunity to cross-examine witnesses for the prosecution. *See Faretta v. California*, 422 U.S. 806, 818 (1975) (stating right to be informed of nature and cause of accusation, right to counsel, right of confrontation, and right to compulsory process are basic to criminal justice system and fundamental rights); *see also Gideon v. Wainwright*, 372 U.S. 335 (1963) (right to counsel); *Pointer v. Texas*, 380 U.S. 400 (1965) (right of confrontation); *Washington v. Texas*, 388 U.S. 14 (1967) (right to compulsory process); *Barker v. Wingo*, 407 U.S. 514 (1972) (right to speedy trial). However, here, the requestor is seeking information pursuant to the Act. As the Sixth Amendment guarantees the rights of an accused in criminal proceedings, it is not implicated in the context of a request for information under the Act, and, consequently, does not afford the requestor a right of access to the submitted information.

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 to show section 552.103(a) applies in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the requested information is related to that litigation. *See 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish litigation is reasonably anticipated, a governmental body must provide this office with “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *Id.* In the context of anticipated litigation in which the governmental body is the prospective plaintiff, the concrete evidence must at least reflect litigation is “realistically contemplated.” *See* Open Records Decision No. 518 at 5 (1989); *see also* Attorney General Opinion MW-575 (1982) (finding investigatory file may be withheld if governmental body attorney determines it should be withheld pursuant to section 552.103 and litigation is “reasonably likely to result”).

You inform us the county is provided with enforcement authority under chapter 16 of the Texas Water Code and authorized to pursue litigation in those instances where a homeowner fails to cure a violation of the county’s floodplain management regulations. You state the information at issue directly relates to violations of the county’s floodplain management regulations that were uncured on the date the county received the request for information. Based on your representations, our review of the requested information, and the totality of the circumstances, we find the information you have marked is related to litigation the county reasonably anticipated on the date it received the request for information. Accordingly, we find the county may withhold the information you have marked under section 552.103 of the Government Code.<sup>1</sup>

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the anticipated 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 been concluded or is no longer anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov’t Code § 552.130(a). Upon review, we find the county must withhold the motor vehicle record information you have marked, along with the information we have marked, under section 552.130 of the Government Code.

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<sup>1</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

In summary, the county may withhold the information you have marked under section 552.103 of the Government Code. The county must withhold the information you have marked, along with information we have marked, under section 552.130 of the Government Code. The county must release the remaining information.

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,

A handwritten signature in black ink that reads "Megan G. Holloway". The signature is written in a cursive style with a large, looping flourish at the end of the name.

Megan G. Holloway  
Assistant Attorney General  
Open Records Division

MGH/akg

Ref: ID# 529787

Enc. Submitted documents

c: Requestor  
(w/o enclosures)