



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2014

The Honorable Harold Keeter
County Judge
Swisher County
119 South Maxwell Avenue
Tulia, Texas 79088

OR2014-12667

Dear Judge Keeter:

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# 529988.

Swisher County (the "county") received a request for (1) all personnel records of a named individual, (2) all emails to and from named individuals concerning the specified individuals and specified topics, (3) all complaints and letters of resignation from the named individuals, (4) all correspondence and documents from the named individuals pertaining to a specified case, (5) all cell phone records from county issued cell phones for the named individuals, and (6) all documents pertaining to the county's Commissioners' Court (the "commissioners") meetings during the specified time period. You state the county does not have information responsive to the fifth category of the request.¹ 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.

The submitted information contains notices of public meetings and the minutes from those meetings. Notices of a governmental body's public meetings and the minutes from public

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See* Gov't Code §§ 551.022 (minutes of open meeting are public records and shall be available for public inspection and copying upon request), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the submitted public meeting notice and minutes must be released pursuant to sections 551.022 and 552.041 of the Government Code.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information includes information in an account, voucher, or contract relating to the receipt or expenditure of funds by a governmental body that is subject to section 552.022(a)(3). The county must release this information pursuant to section 552.022(a)(3), unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(3). Although the county raises section 552.103 of the Government Code for this information, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit*, 4 S.W.3d at 475-76 (governmental body may waive section 552.103); ORDs 665 at 2 n.5 (discretionary exceptions generally), 663 at 5 (waiver of discretionary exceptions). Therefore, the county may not withhold any of the information subject to section 552.022(a)(3), which we have marked, under section 552.103. However, because section 552.136 of the Government Code makes information confidential for purposes of section 552.022, we will consider the applicability of this exception to the information subject to section 552.022.² Further, we will address the county's argument against disclosure of the remaining information.

²The Office of the Attorney General will raise 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).

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.

To establish litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing the claim that litigation may ensue is more than mere conjecture." *See* Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* This office has stated a pending complaint with the Equal Employment Opportunity Commission (the "EEOC") indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982).

You state, and provide supporting documentation showing, prior to the county's receipt of the present request for information, the requestor filed a complaint with the EEOC alleging discrimination. Based on your representations and our review, we find the county reasonably anticipated litigation on the date it received the present request. You explain the remaining information at issue relates to the anticipated litigation. Upon review, we find the information we have marked relates to the anticipated litigation. Therefore, the county may withhold the information we have marked under section 552.103 of the Government Code. However, we find you have failed to demonstrate how the remaining information at issue is related to the anticipated litigation involving the requestor's client. *See* Gov't Code

§ 552.301(e)(1) (requiring governmental body to explain applicability of raised exception); *see also* Open Records Decision Nos. 551 at 5 (attorney general will determine whether governmental body has reasonably established information at issue is related to litigation), 511 at 2 (1988) (information “relates” to litigation under statutory predecessor if its release would impair governmental body’s litigation interests). Accordingly, the county may not withhold the remaining information at issue under section 552.103.

We note, 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 license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130. Accordingly, the county must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the county must withhold the account numbers we have marked under section 552.136 of the Government Code.

In summary, the county must release the submitted public meeting notice and minutes must be released pursuant to sections 551.022 and 552.041 of the Government Code. The county may withhold the information we have marked under section 552.103 of the Government Code. The county must withhold the information we have marked under section 552.130 and section 552.136 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, 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, appearing to read 'Meredith L. Coffman', with a stylized flourish at the end.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 529988

Enc. Submitted documents

c: Requestor
(w/o enclosures)