



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2014

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79408-2000

OR2014-12862

Dear Ms. Sims:

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# 530603.

The City of Lubbock (the "city") received a request for the following: 1) the city's employee policy manual and any other information regarding rules, regulations, and policies for city employees during a specified time period; 2) communications between named individuals and businesses; 3) information regarding a trip taken by two specified city employees; and 4) information regarding benefits, compensation, remuneration, gratuities, in-kind gifts or travel, food and lodging provisions, payments, or reimbursements made or offered to two named city employees by named individuals and businesses. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note the city has only submitted information responsive to category 1 of the request for information. To the extent information responsive to the other categories of the request for information existed and was maintained by the city on the date of the request, we assume it has been released. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301, .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).

¹Although the city also raises sections 552.101, 552.107, and 552.111 of the Government Code for the submitted information, the city has provided no arguments in support of those exceptions. Accordingly, we assume the city no longer asserts section 552.101, section 552.107, or section 552.111. *See* Gov't Code §§ 552.301, .302.

Section 552.103 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). The governmental body has the burden of providing relevant facts and documents to show that 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 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." *See* Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. *See* Open Records Decision No. 555 (1990); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). In addition, this office has concluded litigation was reasonably anticipated when the potential opposing party hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, or when an individual threatened to sue on several occasions and hired an attorney. *See* Open Records Decision Nos. 346 (1982), 288 (1981). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish litigation is reasonably anticipated. *See* Open Records Decision No. 361 (1983).

You state the city reasonably anticipated litigation when it received the request for information. You inform us, and provide documentation showing, the requestor is an attorney representing a defendant in a pending lawsuit. You also inform us prior to the date of the request for information, the requestor filed a motion to designate the city as a responsible third party in the lawsuit against the requestor's client. Accordingly, you state the city was put on notice that the city may be joined in the pending litigation or may be named as a defendant. You contend the submitted information is related to the subject matter of the litigation. You state the requestor additionally sought most of the information at issue in the instant request through a request for discovery from the city prior to the date the city received the request for information. Based on your representations and our review, we find the city reasonably anticipated litigation when it received the request for information. We also find the city has established the submitted information is related to the anticipated litigation for purposes of section 552.103(a). Therefore, we agree the city may withhold the submitted information under section 552.103(a).

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 pending or 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).

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,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/tch

Ref: ID# 530603

Enc. Submitted documents

c: Requestor
(w/o enclosures)