



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2014

Mr. Jorge L. Trevino, Jr.
Assistant County Attorney
County of Webb
1110 Washington Street, Suite 301
Laredo, Texas 78040

OR2014-17363

Dear Mr. Trevino:

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# 537898.

The Webb County Attorney's Office (the "county attorney's office") received a request for information pertaining to four specified settlement agreements related to civil action numbers or complaint numbers 5:13-CV-00122, 451-2012-02685, 5:14-CV-0041, and 2013-2014-MLM-E.¹ You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have received comments from an interested third party. *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). We have considered the exceptions you claim and reviewed the submitted information.

¹You state the county attorney's office sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Initially, we must address the obligations of the county attorney's office under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to subsection 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The county attorney's office received the request for information on July 15, 2014; you indicate you sought and received clarification of the request on the same day. *See id.* § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Accordingly, you were required to provide the information required by subsection 552.301(e) by August 5, 2014. However, as of the date of this ruling, you have not submitted information responsive to the request for information pertaining to civil action number 5:13-CV-00122. Consequently, we find the county attorney's office failed to comply with the requirements of section 552.301 in requesting this decision from our office with respect to information pertaining to the civil action at issue.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.103 of the Government Code for the submitted information, this section is discretionary in nature. It serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, the county attorney's office has waived its claim under section 552.103 for information

pertaining to the civil action at issue. Accordingly, the county attorney's office must release the information pertaining to civil action number 5:13-CV-00122 at this time.

Next, we note the information you have submitted as Exhibit 3 is not responsive to this request because it does not pertain to one of the four requested settlement agreements. This ruling does not address the public availability of any information that is not responsive to the request and the county attorney's office is not required to release such information in response to this request.

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). We note a contested case before the

State Office of Administrative Hearings (“SOAH”) is considered litigation for the purposes of the Administrative Procedures Act (the “APA”). *See* Open Records Decision No. 588 at 7 (1991).

You seek to withhold Exhibit 4, Exhibit 5, and Exhibit 6 under section 552.103 of the Government Code. You state, and provide documentation showing, prior to the county attorney’s office’s receipt of the instant request, the county was involved in an EEOC complaint, numbered 451-2012-02685. Based on this representation and our review, we conclude you have established the county reasonably anticipated litigation with regard to the information at issue in Exhibit 4 on the date you received the request for information. We also agree the information in Exhibit 4 is related to the anticipated litigation for purposes of section 552.103. Additionally, you state, and provide documentation showing, prior to the county attorney’s office’s receipt of the instant request, Webb County (the “county”) was involved in litigation, styled *Comité de Ciudadanos Unidos de el Cenizo, et al. v. Webb County*, Cause No. 5:14-CV-0041 in the United States District Court for the Southern District of Texas, Laredo Division. Based upon this representation and our review, we find the litigation at issue in Exhibit 5 was pending at the time the request was received. We also agree the information in Exhibit 5 is related to the litigation at issue for purposes of section 552.103. Further, you indicate, and the submitted documentation reflects, prior to the county attorney’s office’s receipt of the instant request, the county was the subject of an enforcement action brought by the Litigation Division of the Office of Legal Services for the Texas Commission on Environmental Quality. As such, we find the county attorney’s office was involved in pending litigation with respect to complaint number 2013-2014-MLM-E on the date the request was received. In addition, we agree the information in Exhibit 6 relates to this pending litigation. Accordingly, the county attorney’s office may withhold the information in Exhibit 4, Exhibit 5, and Exhibit 6 under section 552.103 of the Government Code.²

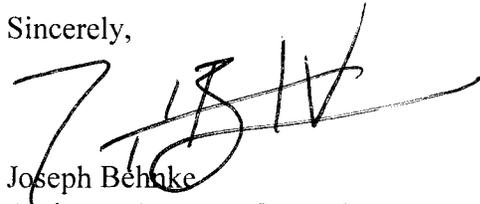
Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from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

²As our ruling is dispositive for the information in Exhibit 4, we need not address your remaining argument against its disclosure.

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 "JBH", with a long horizontal stroke extending to the right.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 537898

Enc. Submitted documents

c: Requestor
(w/o enclosures)