



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 18, 2006

Ms. Moira Schilke
Assistant District Attorney
Dallas County District Attorney
411 Elm Street, Suite 500
Dallas, Texas 75202-3384

OR2006-03871

Dear Ms. Schilke:

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# 246627.

The Dallas County Constable, Precinct No. 5 (the "constable") received a request for six categories of information pertaining to a named deputy. You state that the constable does not have information responsive to a portion of the requested information. We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986). You claim that the remaining requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the submitted arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (providing that persons may submit comments stating why information should or should not be released).

Initially, the requestor asserts that the constable did not provide notice of the constable's request for a decision from this office within the ten-business-day time period mandated under section 552.301(d) of the Government Code. A governmental body's failure to comply with section 552.301 results in the legal presumption that the information at issue is public

and must be released, unless there is a compelling reason to withhold the information. Gov't Code § 552.302. In this case, we note that your request for a decision to this office, which was timely submitted, indicates that you sent a copy of the letter to the requestor via facsimile. Additionally, you have provided our office with copies of the facsimile transmittal confirmation showing that this information was indeed timely transmitted. As the requestor provides no documentation to the contrary, we determine that you have provided the required notice pursuant to section 552.301(d).

Section 552.103 of the Government Code provides as follows:

(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 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 was 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, no pet.); *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).

You represent to this office that the requested information relates to a pending litigation entitled *Garden City Boxing Club v. Richard A. Martinez and Dallas County Constable Precinct 5, Michael Dupree*, Cause No. CC-03-11812-B to which the constable, its officers, and its employees are parties. Accordingly, we find that the constable has established that litigation was pending when it received this request for information. We further find that the submitted information is related to the litigation for the purposes of section 552.103 of the Government Code.

We note, however, that 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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending lawsuit is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Margaret Cecere".

Margaret Cecere
Assistant Attorney General
Open Records Division

MC/sdk

Ref: ID# 246627

Enc. Submitted documents

c: Mr. Andrew R. Korn
Korn, Bowdich, & Diaz LLP
4221 Avondale Avenue
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(w/o enclosures)