



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 21, 2006

Mr. Larry M. Thompson
Assistant District Attorney
Tarrant County
Hospital District Office
1025 South Jennings, Suite 300
Fort Worth, Texas 76104

OR2006-06521

Dear Mr. Thompson:

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# 252572.

The Tarrant County Hospital District (the "district") received a request for five categories of information related to the district police department, excluding social security numbers. The requestor subsequently amended the request to withdraw categories one, three, and five and to add a sixth category of information. You state that information responsive to the sixth category has been released to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

¹Although you also raise section 552.108, you do not submit arguments in support of a claim under section 552.108. Therefore, you have waived any claim of exception from disclosure under this section of the Government Code. See Gov't Code §§ 552.301, .302; Open Records Decision Nos. 586 (1991) (governmental body may waive predecessor to section 552.108).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. You assert that the documents in Exhibit D, which you state pertain to an internal investigation conducted by the district police department, are confidential pursuant to section 143.089 of the Local Government Code. Chapter 143 of the Local Government Code, however, applies only to a city that adopts a civil service system covering fire fighters, police officers, or both. *See* Loc. Gov’t Code § 143.002, .004 (Vernon 1999). As the district is not a municipality, section 143.089 is inapplicable to the records at issue, and Exhibit D may not be withheld under section 552.101 of the Government Code on that basis.

We note that chapter 158 of the Local Government Code provides for a county civil service scheme. Subchapter A permits a county with a population of 200,000 or more to create a county civil service system to include “all the employees of the county who are not exempted from the system by the express terms or judicial interpretations of [Subchapter A] or by the operation of Subchapter B.” Loc. Gov’t Code § 158.002. You do not inform this office that the employee whose records are issue is included in a county civil service system. Further, we note that chapter 158 does not contain a confidentiality provision applicable to employee records. *See* Loc. Gov’t Code §§ 158.001-.040. Therefore, chapter 158 is inapplicable to the records at issue, and they may not be withheld under section 552.101 of the Government Code on that basis.

You next claim that Exhibit E is excepted from public disclosure under section 552.103 of the Government Code, which provides in relevant part 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 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 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 that 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.

You state that the submitted information relates to a lawsuit currently pending against the district. You provide documentation showing this case was filed prior to the district receiving the request for information. We find that litigation was pending on the date the district received the request for information. We also find that the information in Exhibit E is related to the pending litigation. Therefore, the district has demonstrated the applicability of section 552.103 of the Government Code to the information at issue.

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). In this instance, we note that the information at issue consists of a grievance filed by the former district employee who is the opposing party in the pending litigation. Thus, we conclude that the information that has been obtained from the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed.

We note that section 552.130 of the Government Code is applicable to some of the submitted information.² This section excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document. *See* Gov't Code § 552.130(a)(1), (3). We have marked information that must be withheld under section 552.130.

Accordingly, we have marked the information that the district must withhold under section 552.130 of the Government Code. The remaining responsive information must be released to the requestor.

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

²This office will raise a mandatory exception such as section 552.130 on behalf of a governmental body, as mandatory exceptions may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/eb

Ref: ID# 252572

Enc. Submitted documents

c: Mr. Anthony Spangler
Fort Worth Star Telegram
400 West 7th Street
Fort Worth, Texas 76102
(w/o enclosures)

Mr. John Freeman
1920 West Tarrant Road #32-L
Grand Prairie, Texas 75050
(w/o enclosures)