



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2006

Ms. Vanessa A. Gonzales
Allison, Bass, & Associates, L.L.P.
Attorney for Llano County, Texas
402 West 12th Street
Austin, Texas 78701

OR2006-12839

Dear Ms. Gonzales:

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# 263311.

Llano County (the "county") received two identical requests from the same requestor for five categories of information regarding the county's Department of Natural Resources, along with a list of all employees hired directly by the Llano County Judge and the job postings for these positions. You inform us that the county does not maintain some of the requested information.¹ You claim that 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.

¹The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

Initially, we note that you did not submit the requested minutes of a specific meeting. As you have not submitted this information for our review, we assume you have released it to the extent that it existed at the time this request was received. If you have not released any such records, you must release them to the requestor at this time. See Gov't Code §§ 552.301(a), .302.; see also Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Next, we note that some of the information that the county seeks to withhold is subject to section 552.022 of the Government Code. Section 552.022 provides in part that:

the following categories of information are public information and not excepted from required disclosure under [the Act] unless they are expressly confidential under other law:

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate;

...

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(5), (15). The county seeks to withhold budgetary information and a job description under section 552.103 of the Government Code. The budgetary information is subject to section 552.022(a)(5). Section 552.103 is a discretionary exception to public disclosure that protects a governmental body's interests and may be waived. See Gov't Code § 552.007; *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 (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 subject to waiver). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022. Therefore, the county may not withhold the budgetary information under section 552.103.

Job descriptions are usually open to the public as part of a job posting,² and thus expressly public under section 552.022(a)(15). If the county regards the submitted job description as open to the public, then the county may withhold this information only to the extent it is made confidential under "other law." As noted, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022. Therefore, the job description must be released pursuant to section 552.022(a)(15) if the county regards it as open to the public.

²We note that the county's website lists jobs that are currently available.

We now address your claim under section 552.103 of the Government Code for the remaining information not subject to section 552.022. Section 552.103 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). 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 was pending or reasonably anticipated when the governmental body received the request, 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). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

In this instance, you inform us, and provide documentation showing, that the defendant, the "Administrator of the Llano County Department of Natural Resources" was sued by the requestor in both "his individual and official capacity[.]" Thus, we agree that the county is currently involved in litigation with the requestor. Furthermore, based on your representations and our review of the information at issue, we find that the remaining information relates to the pending litigation for purposes of section 552.103(a). We therefore conclude that the remaining information may be withheld from disclosure pursuant to section 552.103.

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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation 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).

In summary, the county must release the budgetary information under section 552.022 of the Government Code. The job description must be released pursuant to section 552.022(a)(15) of the Government Code if the county regards it as open to the public. The remaining information may be withheld under section 552.103.

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 black ink, appearing to read 'José Vela III', written over a horizontal line.

José Vela III
Assistant Attorney General
Open Records Division

JV/eb

Ref: ID# 263311

Enc. Submitted documents

c: Marion C. Bloss
P.O. Box 1015
Buchanan Dam, Texas 78609-1015
(w/o enclosures)