ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2007

Mr. Hal C. Hawes
Assistant County Attorney
Williamson County
405 Martin Luther King Street
Georgetown, Texas 78626

OR2007-06691

Dear Mr. Hawes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 279559.

Williamson County (the "county") received a request for records relating to the county landfill. You claim that Exhibit B is excepted from disclosure under section 552.103 of the Government Code. We have considered your claimed exception to disclosure and have reviewed the submitted information. We have also considered the comments submitted by a representative of the requestor. *See* Gov't Code § 552.304 (providing that any interested party may submit comments explaining why requested information should or should not be released).

Section 552.103, the "litigation exception," excepts from disclosure information relating to litigation to which a governmental body is or may be a party. *See id.* § 552.103(a). The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. *Id.* § 552.301(e)(1)(A). In order to meet this burden, the governmental body must show that: (1) litigation was pending or reasonably anticipated on the date of the request for information, and (2) the information at issue is related to that litigation. *Id.* § 552.103; *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, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Contested cases conducted under the Administrative

Procedure Act, chapter 2001 of the Government Code, are considered litigation under section 552.103. Open Records Decision No. 588 at 7 (1991).

You explain that the county filed an application for a permit amendment to expand its Type I Municipal Solid Waste Landfill Facility. You state that the application is the subject of an administrative proceeding before the State Office of Administrative Hearings. After reviewing your arguments and the submitted documentation, we find that the county has demonstrated that litigation was pending on the date it received the request.

We now examine whether the requested information is related to the pending litigation. Exhibit B contains a copy of an administrative code provision relating to the permit proceeding. After reviewing the document and your arguments, we conclude that the provision may be withheld under section 552.103. Exhibit B also contains the draft contract for the operation of the landfill. You state that the financial terms of the contract relate to the permit issues in the pending litigation. The requestor states and you acknowledge that this document was previously sought by the Landfill Committee of the Hutto Citizens Group in its Request for Production. In responding to the Request for Production, the county stated that it objected to the release of the contract because the information is "irrelevant" to the litigation. The requestor argues that the county cannot assert in the Request for Production that the contract is irrelevant and assert to this office that the same information is related to the litigation. The Public Information Act does not define "relatedness." In addressing this issue, however, the Third Court of Appeals stated that "related" means "pertaining to," "associated with" or "connected with." *Texas Legal Found.*, 958 S.W.2d at 483. The court further stated that information can be *related to* litigation without being *relevant to* the substantive issues in the litigation. *Id.* Therefore, the county's statement that the draft contract is irrelevant to the litigation does not contradict its arguments that the document is related to the proceeding.

However, the county also states in the objection to the Request for Production that the draft contract is "unrelated to a requirement applicable to Williamson County's application." The objection further reads that "[t]he question presented in the proceeding is whether Williamson County's application 'complies with all applicable statutory and regulatory requirements.'" It appears from this language that the county's response was narrowly crafted to address a specific issue of the litigation. In its brief to this office, the county states that the draft contract is related to the height of the landfill and the use of alternative daily cover at the landfill. Thus, while the draft contract may not be related to a requirement of the application, it is related to other issues pertaining to the hearing. Accordingly, after examining the submitted materials and the arguments, we find that the draft contract is related to the pending litigation for purposes of section 552.103.

The requestor asserts, however, that the document has been previously released to members of the public. The Public Information Act prohibits selective disclosure. *See* Gov't Code § 552.007. Thus, once a governmental body has released non-confidential information to a

member of the public, it is generally prohibited from withholding that information from other members of the public. *See id.* The county acknowledges that the draft contract was reviewed by individuals elected to succeed current members of the Williamson County Commissioners Court. The county states that "[t]he members-elect were elected to serve the citizens of Williamson County on the succeeding Williamson County Commissioners Court and they did not have any interest contrary to those of Williamson County." Whether the members-elect were officials or merely public citizens when they reviewed the contract is a question that cannot be answered in the rulings process. Where fact issues are not resolvable as a matter of law nor ascertainable from the face of the documents submitted for our review, we must rely on the representations of the governmental body requesting our opinion. Open Records Decision No. 552 (1990). Accordingly, based on the submitted arguments, we find that the county did not selectively disclose Exhibit B and it may be withheld under section 552.103.

Generally, 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. We note that 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

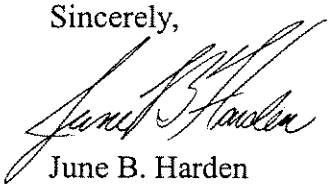
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/sdk

Ref: ID# 279559

Enc: Submitted documents

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