



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 13, 2009

Ms. Barbara L. Quirk  
Assistant City Attorney  
Bovey & Bojorquez, L.L.P.  
12325 Hymeadow Drive, Suite 2-100  
Austin, Texas 78750

OR2009-03368

Dear Ms. Quirk:

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# 337529.

The City of Nolanville (the "city"), which you represent, received a request for information relating to an inhabitants count conducted by the city and a specified city ordinance. You state some information has been released to the requestor. 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.

Section 552.103 of the Government Code provides in 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). The city 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) that litigation was pending or reasonably anticipated on the date of the receipt of the request for information and (2) that the information at issue is related to the pending or anticipated 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 city must meet both prongs of this test for information to be excepted under section 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). In the context of anticipated litigation by a governmental body, the concrete evidence must at least reflect that litigation is “realistically contemplated.” *See* Open Records Decision No. 518 at 5 (1989); *see also* Attorney General Opinion MW-575 (1982) (finding that investigatory file may be withheld from disclosure if governmental body attorney determines that it should be withheld pursuant to section 552.103 and that litigation is “reasonably likely to result”). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986).

You inform us that the submitted information is related to an inhabitants count conducted by the city. You assert that an attorney representing the City of Harker Heights (“Harker Heights”) has contacted the city regarding a disagreement over the inhabitants count. You further assert that possible litigation was discussed in a meeting of the Harker Heights Council. However, you do not inform us that the city is a party to any pending litigation. Furthermore, you do not indicate, nor does the information reflect, that the requestor has taken any objective steps towards initiating litigation against the city. *See* Open Records Decision No. 361 (1983). Therefore, we find the city has not demonstrated that litigation was pending or reasonably anticipated on the date it received the instant request for information. Accordingly, the city may not withhold any portion of the submitted responsive information under section 552.103 of the Government Code.

We note that portions of the submitted information are subject to section 552.137 of the Government Code.<sup>1</sup> Section 552.137 excepts from disclosure “an e-mail address of a

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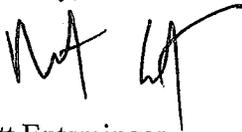
<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). We note that section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public” but is instead the address of the individual as a government employee. We have marked e-mail addresses which do not appear to be of a type specifically excluded by section 552.137(c). Therefore, the city must withhold the marked e-mail addresses pursuant to section 552.137 of the Government Code, unless the city has received consent for their release. As you raise no other exceptions to disclosure, the remaining information must be released.

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.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/jb

Ref: ID# 337529

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)