



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2009

Ms. Vanessa A. Gonzalez
Allison, Bass & Associates, L.L.P.
402 West 12th Street
Austin, Texas 78701

OR2009-11348

Dear Ms. Gonzalez:

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# 352256.

The Bandera County Sheriff's Office (the "sheriff"), which you represent, received a request for the radio log for April 22, 2009, between 12:30 p.m. and 3:00 p.m. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

Section 552.103 of the Government Code, the "litigation exception," 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). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See 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 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990)*. To establish that litigation is reasonably anticipated, a governmental body must provide this office with “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *Open Records Decision No. 452 at 4 (1986)*. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.*

You inform us that the requestor is a former deputy sheriff whose employment was terminated. You state that the requestor has filed a charge of employment discrimination with the federal Equal Employment Opportunity Commission (the “EEOC”). You have provided a copy of the requestor’s EEOC charge, which states that he was terminated on April 22, 2009. You indicate, and the charge itself reflects, that it was filed prior to the sheriff’s receipt of the present request for information. You contend that the EEOC charge demonstrates that the sheriff reasonably anticipated litigation when he received this request for information. This office has stated that a pending EEOC complaint indicates that litigation is reasonably anticipated. *See Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982)*. We therefore agree that the submitted EEOC charge demonstrates that the sheriff reasonably anticipated litigation on the date of his receipt of this request.

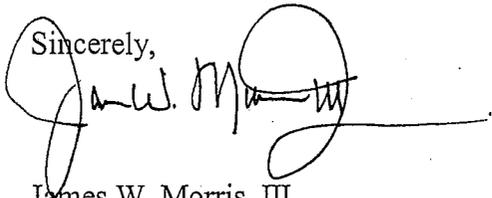
You also contend that the submitted radio log is related to the anticipated litigation because the requestor was terminated on the date of the log, April 22, 2009, and because the log includes a recording of the requestor being called in on that day. Having considered your arguments, we find that you have not demonstrated that the radio log is related to the requestor’s charge of discrimination merely because it is from the date of his termination and includes a recording of him being called in from the field. *See Open Records Decision Nos. 551 at 5 (1990) (attorney general will determine whether governmental body has reasonably established that information at issue is related to litigation), 511 at 2 (1988) (information “relates” to litigation under statutory predecessor if its release would impair governmental body’s litigation interests)*. We therefore conclude that the sheriff may not withhold the submitted information under section 552.103 of the Government Code.

We note that the sheriff may be required to withhold some of the submitted information under section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. See Gov't Code § 552.130(a)(1)-(2). The submitted radio log contains references to motor vehicle record information, including driver's license numbers, license plate numbers, and dates of expiration. To the extent that the log contains a Texas driver's license or license plate number, the sheriff must withhold that information and any corresponding expiration date under section 552.130. The rest of the submitted information must be released. In the event that the log contains Texas motor vehicle record information, and the sheriff has no means of redacting such information, the entire log must be withheld under section 552.130.

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, 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 352256

Enc: Submitted information

c: Requestor
(w/o enclosures)

¹Unlike other exceptions to disclosure under the Act, this office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).