



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 22, 2010

Mr. Chris Schuchart
Chris Schuchart, P.C.
Attorney for City of LaCoste
P.O. Box 1569
Castroville, Texas 78009

OR2010-01026

Dear Mr. Schuchart:

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# 367950.

The City of LaCoste (the "city"), which you represent, received a request for several categories of information related to "compliance with federal, state and local pollution laws, regulations or ordinances" at the city's wastewater treatment facility and an independently-owned treatment facility located on land leased from the city. 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. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we note a third party, Partners Dewartering International, L.L.C. ("PDI"), has submitted information for review and provided arguments against disclosure of this information.¹ This ruling does not address information related to PDI beyond what the city

¹PDI states it "is not [an] agent, representative, consultant, or some functional equivalent of the [c]ity" and the city makes a similar representation. The requestor has submitted comments arguing in favor of disclosure of information submitted by PDI that relates to "organic non-hazardous industrial waste" and "sampling and analytical data relating to the waste materials discharged by PDI into the [c]ity's wastewater plant." The requestor makes this argument based on the terms of the contract between the city and PDI, while PDI responds that its submitted information is not subject to the contract, and that no information subject to the contract exists.

submitted to this office for review, and is limited to the information the city submitted as responsive to the instant request. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

The city claims the information it submitted is excepted from disclosure under section 552.103 of the Government Code, which provides in relevant 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.

Id. § 552.103(a), (c). The governmental body claiming this exception bears the burden of providing relevant facts and documents to demonstrate the applicability of the exception. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date 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). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. *See* Open Records Decision Nos. 555 (1990), 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision

No. 331 (1982). Further, the fact a potential opposing party has hired an attorney who makes a request for information does not establish litigation is reasonably anticipated. *See* Open Records Decision No. 361 (1983). When the governmental body is the prospective plaintiff in litigation, the evidence of anticipated litigation must at least reflect that litigation involving a specific matter is "realistically contemplated." *See* ORD 518 at 5; *see also* Attorney General Opinion MW-575 (1982) (investigatory file may be withheld if governmental body's attorney determines that it should be withheld pursuant to section 552.103 and that litigation is "reasonably likely to result").

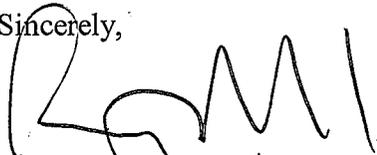
In this instance, the city has not provided any specific arguments explaining how the submitted information relates to anticipated or pending litigation involving the state or a political subdivision of the state, or an officer or employee of the state or a political subdivision of the state, as a consequence of the person's office or employment. Therefore, we conclude the city has failed to establish that section 552.103 is applicable to the information at issue. Accordingly, the city may not withhold its submitted information under section 552.103 of the Government Code. As the city raises no further exceptions, it must release the information it has submitted.

In summary, (1) this ruling does not address information submitted by PDI, and (2) the city must release the information it has submitted.

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, toll free, at (888) 672-6787.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 367950

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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