



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2011

Ms. Natalie Niles Argüello
For Pharr San-Juan Alamo Independent School District
The Fowler Law Firm, P.C.
919 Congress Avenue, Suite 1150
Austin, Texas 78701

OR2011-10013

Dear Ms. Argüello:

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# 424032.

The Pharr San-Juan Alamo Independent School District (the "district"), which you represent, received a request for bid packages used for ranking two specified companies in relation to two specified projects, and any notes, recordings, or paperwork related to the points evaluations and recommendations with respect to the two specified projects. You claim the submitted information is excepted from disclosure pursuant to 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, 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). 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).*

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.¹ *Open Records Decision No. 555 (1990); see Open Records Decision No. 518 at 5 (1989)* (litigation must be "realistically contemplated"). On the other hand, this office has determined that 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).*

You state, and provide documentation showing, the requestor filed an application for a temporary restraining order and writ of injunction against the district regarding the execution of a specified contract. The submitted documentation reflects this case is currently pending in the 398th Judicial District of Hidalgo County, Texas. We note, however, the submitted documentation also reflects the application at issue was not filed until after the district received the present request for information. Therefore, we determine the district has failed

¹Among other examples, this office has concluded that litigation was reasonably anticipated where the opposing party took the following objective steps toward litigation: (1) filed a complaint with the Equal Employment Opportunity Commission, *see Open Records Decision No. 336 (1982)*; (2) hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see Open Records Decision No. 346 (1982)*; and (3) threatened to sue on several occasions and hired an attorney, *see Open Records Decision No. 288 (1981).*

to demonstrate litigation was pending when the district received the request for information. Further, you have not proven litigation was anticipated by the district prior to its receipt of the request for information. Thus, you have failed to establish litigation was pending or reasonably anticipated when the district received the request for information. *See* Gov't Code 552.103(c) (litigation must be pending or reasonably anticipated at the time the governmental body receives the request for information). Thus, the district may not withhold any of the submitted information under section 552.103 of the Government Code.

We note portions of the submitted information are subject to section 552.136 of the Government Code, which provides that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”² Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for purposes of section 552.136. We conclude the district must withhold the insurance policy, bank account, and bank routing numbers we have marked under section 552.136 of the Government Code.

The remaining information contains e-mail addresses of members of the public. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a 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). *See id.* § 552.137(a)-(c). Section 552.137(c) excludes e-mail addresses provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent, those contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract. *See id.* § 552.137(c). We also note section 552.137 is not applicable to an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail addresses we have marked are not of the types specifically excluded by section 552.137(c). Accordingly, the district must withhold the marked e-mail addresses under section 552.137, unless the owners have affirmatively consented to their release. *See id.* § 552.137(b).

In summary, the district must withhold the insurance policy, bank account, and bank routing numbers we have marked under section 552.136 of the Government Code and the marked

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

e-mail addresses under section 552.137, unless the owners have affirmatively consented to their release.³ 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, 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 424032

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision, including insurance policy, bank account, and bank routing numbers under section 552.136 of the Government Code and e-mail addresses of members of the public under section 552.137 of the Government Code.