



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 19, 2011

Ms. Barbara Corley  
Assistant General Counsel  
Texas Department of Criminal Justice  
Office of the General Counsel  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2011-10265

Dear Ms. Corley:

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# 424582.

The Texas Department of Criminal Justice (the "department") received a request for information relating to *Thomas Thompson v. Sgt. T. W. Davis, et al.*, Cause No. 1:11-CV-28, specifically the legal name and current employer's institutional address for each named defendant appearing in the civil action suit. In the event any of the named defendants are no longer employed by the department, the requestor also seeks the dates of termination or retirement. You claim 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.

Initially, we note the requestor seeks only the names, employers' addresses, and any dates of termination or retirement for each of the named defendants appearing in the civil action suit. Because the requestor seeks only this specified information, any information outside the scope of this request is not responsive. This ruling does not address the public availability of any information that is not responsive to the request and that information need not be released in response to the present request.

Next, we note some of the requested information is subject to section 552.022 of the Government Code. This section provides, in pertinent part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]

Gov't Code § 552.022(a)(2). The employees' names and any dates of termination or retirement are subject to section 552.022(a)(2) of the Government Code. Although you seek to withhold this information under section 552.103 of the Government Code, that section protects a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). As such, section 552.103 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(2). Therefore, the employees' names and any dates of termination or retirement may not be withheld under section 552.103. As you raise no other exceptions to disclosure of this information, it must be released. However, we will consider your claim under section 552.103 for the remaining responsive information not subject to section 552.022.

Section 552.103 of the Government Code provides in part the following:

(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 department has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date of the receipt of the request for information and (2) 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 department must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation representing, that a civil action suit, styled *Thomas Thompson v. Sgt. T. W. Davis, et. al.*, Cause No. 1:11-CV-28, was filed by the requestor against the named defendants in both their individual and official capacities as department employees, and the action is currently pending in the United States District Court for the Eastern District of Texas. You state this case was filed before the department received the present request. Accordingly, we agree litigation to which the department is a party was pending on the date the department received the present request. Further, we find the information at issue is related to the pending litigation. Thus, we conclude the department may withhold the current employer's institutional address for each named defendant under section 552.103 of the Government Code.

We note, however, 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 litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends when the litigation has concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

In summary, the department must release each employee's name and any dates of termination or retirement pursuant to section 552.022 of the Government Code. The department may withhold the employers' institutional addresses under section 552.103 of the Government Code.

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, toll free at (888) 672-6787.

Sincerely,



Kirsten Brew  
Assistant Attorney General  
Open Records Division

KB/em

Ref: ID# 424582

Enc. Submitted documents

c: Requestor  
(w/o enclosures)