



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2012

Ms. Elisha Bird
Assistant County Attorney
Brown County
200 South Broadway
Brownwood, Texas 76801

OR2012-12949

Dear Ms. Bird:

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# 462208.

Brown County (the "county") received a request for a specified proposal. 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).

You claim the submitted information pertains to pending litigation. You state the requestor filed suit against the county for injunctive relief and declaratory judgment. However, you also state the requestor filed suit against the county after the date the county received the present request for information. Thus, you have not provided this office with evidence the requestor had taken any objective steps toward filing a lawsuit prior to the date the county received the present request for information. *See* Gov't Code § 552.301(e); Open Records Decision No. 331 (1982). Upon review, therefore, we find you have not established litigation was pending or reasonably anticipated on the date the county received the request for information. Accordingly, the county may not withhold any of the submitted information under section 552.103 of the Government Code. As you raise no further exceptions to disclosure, the county must release the submitted information.

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/tch

Ref: ID# 462208

Enc. Submitted documents

c: Requestor
(w/o enclosures)