



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 12, 2013

Mr. Mark G. Mann  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR2013-09880

Dear Mr. Mann:

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# 490321 (ORR Nos. GCA13-0215 & GCA13-0216).

The City of Garland (the "city") received two requests from the same requestor for the resume and credentials of a named individual and for information pertaining to the named individual's record on dangerous dog designations. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the city does not maintain information responsive to the portion of the request seeking the resume of the named individual. The Act does not require a governmental body to make available information that did not exist when the request was received nor does it require a governmental body to compile information or prepare new information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See Open Records Decision No. 561 at 8-9* (1990). In this instance, you have submitted a "candidate profile" for the named individual. Because you have provided these documents for our review, we assume the city has made a good-faith effort to relate the request for a resume to information the city possesses.

Next, you have not submitted information responsive to the portion of the request seeking the named individual's record on dangerous dog designations. You state the city does not have a "report or information responsive to that request," and you state "[i]n order to generate such a report, the [c]ity would have to manually review the facts of each bite incident to determine if it met the listed criteria of 'one bites' and then generate a report." We note the requestor does not seek a report; rather, the requestor seeks the named individual's "record for designating dogs as dangerous vs[.] not on one bites." As noted above, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* ORD 561 at 8-9. We further note a governmental body may not refuse to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976); *see also* Open Records Decision No. 497 at 4 (1988) (fact that submitting copies for review may be burdensome does not relieve governmental body of its responsibility to do so). Moreover, if what information is requested is unclear or overly broad to a governmental body, a governmental body may ask the requestor to clarify the request or discuss with the requestor how the scope of the request might be narrowed. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). *See also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You do not inform us the city has asked the requestor to clarify or narrow the scope of this category of the request. Therefore, to the extent any information responsive to the portion of the request seeking the named individual's record on dangerous dog designations existed on the day the request was received, the city must release it. *See* Gov't Code §§ 552.006, .221, .301, .302; Open Records Decision No. 664 (2000).

We now turn to your arguments against disclosure of the submitted information. Section 552.103 of the Government Code provides in relevant 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 has the burden of providing relevant facts and documents to show section 552.103(a) 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 the governmental body received the request for information, and (2) the information at issue is related to that litigation. *See 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551.

To establish litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *See* Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim 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 No. 555 (1990); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”). In addition, this office has concluded litigation was reasonably anticipated when the potential opposing party hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, or when an individual threatened to sue on several occasions and hired an attorney. *See* Open Records Decision Nos. 346 (1982), 288 (1981). 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).

You state, and provide documentation showing, on or before the date the city received the instant request for information, an individual threatened litigation against the city. However, you have not provided this office with evidence any individual had taken any objective steps toward filing a lawsuit as of the date the city received the request for information. *See* Gov't Code § 552.301(e); ORD 331. Upon review, therefore, we find you have not established the city reasonably anticipated litigation on the date it received the request for information. Therefore, the city may not withhold the submitted information under section 552.103 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). You have provided documentation demonstrating the named individual elected confidentiality for some of her personal information under section 552.024 prior to the date

of the city's receipt of the request for information. Therefore, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Upon review, however, we find you have not demonstrated how any of the remaining information is subject to section 552.117(a)(1) and the city may not withhold any of the remaining information on that basis.

We note some of the remaining information is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code and the information we marked under section 552.130 of the Government Code. The city must release the remaining requested 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 490321

Enc. Submitted documents

c: Requestor  
(w/o enclosures)