



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2014

Ms. Myrna S. Reingold
Legal Department
County of Galveston
722 Moody Street, 5th Floor
Galveston, Texas 77550

OR2014-03695

Dear Ms. Reingold:

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# 515428.

The County of Galveston (the "county") received a request for all correspondence between the county and the General Land Office (the "GLO") and all documents related to the proposed closure of Rollover Pass on Bolivar Peninsula between January 2009 and the date of this request. You state you will release some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.103, 552.105, 552.106, 552.107, 552.111, 552.117, and 552.137 of the Government Code and privileged under Texas Rule of Civil Procedure 192.5 and Texas Rule of Evidence 503.¹ Additionally, you provide documentation showing you have notified an interested third party, the GLO, of its right to submit comments to this office explaining why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the GLO objecting to the release of the information at issue. *See id.* We have considered the arguments and reviewed the submitted information.

You assert the marked information is excepted under section 552.103 of the Government Code. Section 552.103 provides, in relevant part:

¹Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

(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) applies 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 requested information 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, orig. proceeding); *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 at 4.

You state the information at issue relates to a lawsuit styled *Gulf Coast Road, Reel and Gun Club, Inc. v. Patterson*, Cause No. 3-13-CV-126, that was pending in the United States District Court for the Southern District of Texas prior to the county's receipt of this request for information. You acknowledge the county is not a party to the pending lawsuit and, therefore, does not have a litigation interest in the matter for purposes of section 552.103. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (statutory predecessor to section 552.103 only applies when governmental body is party to litigation). In such a situation we require an affirmative representation from the governmental body whose litigation interests are at stake that it seeks to withhold the information at issue from disclosure under section 552.103, as well as a demonstration of how that exception applies to the information. We have received a letter from the GLO confirming that the GLO is a party to this litigation. The GLO asserts the information at issue is directly related to the litigation regarding the closure of Rollover Pass on Bolivar Peninsula and requests the information be withheld from disclosure under section 552.103. Accordingly, based on these representations and our review, we find litigation was pending when the county received this request for information and the information at issue is related to the pending litigation for the purposes of section 552.103. Therefore, the county may withhold the information you have

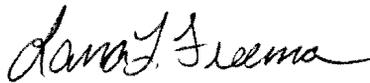
marked on behalf of the GLO under section 552.103 of the Government Code.² The remaining information must be released.

We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. Thus, if the opposing party has seen or had access to information relating to the pending litigation through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lana L. Freeman
Assistant Attorney General
Open Records Division

LLF/tch

Ref: ID# 515428

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Ms. Hadassah Schloss
Open Records Coordinator
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P.O. Box 12873
Austin, Texas 78711-2873
(w/o enclosures)