



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 2, 2014

Mr. Richard R. Gore  
Assistant Criminal District Attorney  
Randall County  
2309 Russell Long Boulevard, Suite 120  
Canyon, Texas 79015

OR2014-05414

Dear Mr. Gore:

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# 517224.

The Randall County Juvenile Probation Department and the Randall County Criminal District Attorney's Office (collectively the "county") each received two requests from different requestors for a specified procedural manual, all e-mail correspondence from May 11, 2013, naming the requestors, specified video and audio recordings, all reprimands issued to the requestors and other specified individuals, and all documents surrounding the requestors' terminations of employment. You state you will release some of the information. You claim the remaining information is excepted from disclosure under section 552.103 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by one of the requestors. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, one of the requestors asserts the county previously released information. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold that exact information from further disclosure unless

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<sup>1</sup>We note in letters dated March 19, 2014, you inform us the county withdraws its request for an opinion on portions of the submitted information.

its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989). However, section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. We note the requestor at issue does not state the exact information at issue was released to any members of the public. Further, we have no indication the information at issue has been released by the county in its exact form to any members of the public. Accordingly, we find section 552.007 of the Government Code is inapplicable to the information at issue.

Next, we will address the assertion the county did not comply with the procedural obligations of section 552.301 of the Government Code made by one of the requestors. Section 552.301 prescribes the procedures a governmental body must follow in asking this office to determine whether information is excepted from public disclosure under the Act. *See* Gov't Code § 552.301 (a). Pursuant to section 552.301(b), within ten business days of receipt of the request the governmental body must ask for a decision from this office and state which exceptions apply to the requested information. *See id.* § 552.301(b). Pursuant to section 552.301(e), within fifteen business days of receipt of a request the governmental body must submit to this office, among other items, a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The requestor at issue asserts he previously requested the information at issue in the current request from the county on May 31, 2013, and September 10, 2013, and the county did not timely assert any exception as required by section 552.301. The submitted information shows the county responded to both the May 31, 2013, and September 10, 2013, requests by providing the requestor at issue with responsive information. We note the May 31, 2013, and September 10, 2013, requests sought documentation surrounding one of the requestor's termination. The current request seeks, among other categories, e-mail correspondence naming the requestors during a specified time period. This office must rely on a governmental body to make a good-faith effort to determine what information is responsive to a request. *See* Open Records Decision No. 590 (1991). Accordingly, based on the information provided to this office, we conclude the county responded to the prior requests, and the December 26, 2013, request is a new and separate request for information. Accordingly, we will consider the county's argument against disclosure of the information at issue.

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, 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.

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 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.* This office has found a pending complaint with the Equal Opportunity Employment Commission (“EEOC”) indicates litigation is reasonably anticipated. *See* Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982), 281 at 1 (1981).

You state, and provide documentation showing, prior to the county's receipt of the instant requests, the requestors filed discrimination claims against the county with the EEOC. Based on your arguments and our review of the submitted information, we find the county reasonably anticipated litigation on the date the requests were received. You also state the information at issue pertains to the substance of the discrimination claim. Based on your representations and our review, we find the information at issue is related to the anticipated litigation. Therefore, the county may withhold the information at issue under section 552.103 of the Government Code.

Generally, 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. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending or anticipated litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded or is no longer anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* 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](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,

A handwritten signature in black ink that reads "Rashandra C. Hayes". The signature is stylized with a large, looping initial "R" and a long horizontal stroke extending to the right.

Rashandra C. Hayes  
Assistant Attorney General  
Open Records Division

RCH/dls

Ref: ID# 517224

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)