



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 22, 2015

Mr. Jody Anderson
President, Board of Directors
Angelina & Neches River Authority
P.O. Box 387
Lufkin, Texas 75902

OR2015-10042

Dear Mr. Anderson:

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# 564804.

The Angelina & Neches River Authority (the "authority") received a request for all information related to complaints regarding the requestor's two sewer systems. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by an interested third party and the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.103 of the Government Code provides, in relevant part:

(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.

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish litigation is reasonably anticipated, a governmental body must provide this office with “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *Id.* In the context of anticipated litigation in which the governmental body is the prospective plaintiff, the concrete evidence must at least reflect litigation is “realistically contemplated.” *See* Open Records Decision No. 518 at 5 (1989); *see also* Attorney General Opinion MW-575 (1982) (finding investigatory file may be withheld if governmental body attorney determines it should be withheld pursuant to section 552.103 and litigation is “reasonably likely to result”).

You seek to withhold the complainant’s identifying information in the submitted information under section 552.103. You state the authority is tasked with the mission to protect the water within the authority’s boundaries, and to employ the means necessary to do so. You explain that mission includes the management and enforcement of the regulations concerning on-site sewage systems, like the ones at issue in the request. You state the enforcement process may result in the imposition of fines or other corrective action, and involves civil and, potentially, criminal penalties. You inform us the submitted complaint information may form the basis for an administrative enforcement action and/or legal action by the authority concerning the use and maintenance of the requestor’s sewage facilities at issue. Based on your representations and our review, we find the submitted information is related to litigation the authority reasonably anticipated on the date it received the request for information. Accordingly, we find the authority may withhold the complainant’s identifying information, which we have marked, under section 552.103 of the Government Code.¹

¹As our ruling for this information is dispositive, we need not address the remaining arguments against disclosure of this information.

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 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).

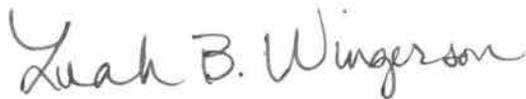
Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). We note section 552.137 does not apply to an e-mail address that a governmental entity maintains for one of its officials or employees because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. Upon review, the only e-mail address in the remaining information is an e-mail address the authority maintains for one of its officials or employees. Consequently, the authority may not withhold the e-mail address under section 552.137 of the Government Code.

In summary, the authority may withhold the information we have marked under section 552.103 of the Government Code. The authority must release the remaining 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.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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 564804

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)