



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 30, 2015

Mr. Robert W. Wilson  
Counsel for Maverick County  
Sanchez & Wilson, PLLC  
115 East Travis, 19<sup>th</sup> Floor  
San Antonio, Texas 78205

OR2015-15547

Dear Mr. Wilson:

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# 573531 (S&W File No. 5863).

The Maverick County Attorney's Office (the "county attorney's office"), which you represent, received a request for (1) all communications or agreements between Maverick County (the "county"), Justice Technology Corporation, and two named individuals; (2) all communications or agreements between the county, a named individual, and Maroon Consultants, LLC; and (3) any fees or payments associated with the transportation of inmates between Webb and Maverick Counties, or with the commissary, or consulting contracts or agreements for the Maverick County Detention Center. The county attorney's office claims the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions the county attorney's office claims and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). Some of the submitted information consists of information in an account, voucher, or contract relating to the receipt or expenditure of funds by a governmental body that is subject to section 552.022(a)(3). The county attorney's office must release this information pursuant to section 552.022(a)(3), unless it is made confidential under the Act or other law. *See id.* Although the county attorney's office raises section 552.103 of the Government Code for this information, this exception is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the county attorney's office may not withhold any of the information subject to section 552.022, which we have marked, under section 552.103. However, because section 552.136 of the Government Code makes information confidential for purposes of section 552.022, we will address its applicability to the information subject to section 552.022.<sup>1</sup> Further, we will address the county attorney's office's arguments against disclosure of the remaining 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). The governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is 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. *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). The governmental body must

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

The question of 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.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, an attorney for a potential opposing party making a demand for payment and asserting an intent to sue if such payments are not made. Open Records Decision Nos. 555 at 3 (1990), 346 (1982). In addition, this office has concluded litigation was reasonably anticipated when the potential opposing party threatened to sue on several occasions and hired an attorney. *See* Open Records Decision No. 288 at 2 (1981). However, an individual publicly threatening to bring suit against a governmental body, but who does not actually take objective steps toward filing suit, is not concrete evidence that litigation is reasonably anticipated. *See* Open Records Decision No. 331 at 1-2 (1982).

The county attorney's office states it reasonably anticipated litigation when it received the request for information because the county attorney's office previously received a letter from the requestor's law firm regarding a possible breach of contract on the part of the county and included a threat of legal action for damages. Thus, we find the county attorney's office reasonably anticipated litigation when it received the request for information. We also find the county attorney's office has established the information at issue is related to the anticipated litigation for purposes of section 552.103(a). Therefore, we agree section 552.103(a) is applicable to the information not subject to section 552.022 of the Government Code.

However, once information has been obtained by all parties to the anticipated 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 the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a). We note the opposing party to the anticipated litigation has seen or had access to some of the information at issue. Therefore, the county attorney's office may not withhold this information, which we have marked, under section 552.103(a). However, we agree the county attorney's office may withhold the remaining information not subject to section 552.022 of the Government Code under section 552.103(a).<sup>2</sup> We note the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision No. 350 (1982).

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential."

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<sup>2</sup>As our ruling is dispositive, we need not address the county attorney's office's remaining argument against disclosure of this information.

Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, we find the county attorney's office must withhold the information we have marked under section 552.136 of the Government Code.

In summary, with the exception of the information we have marked for release, the county attorney's office may withhold the information not subject to section 552.022 of the Government Code under section 552.103(a) of the Government Code. The county attorney's office must withhold the information we have marked under section 552.136 of the Government Code. The county attorney's office must release the remaining information.<sup>3</sup>

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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/bhf

Ref: ID# 573531

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the requestor has a special right of access to some of the information being released in this instance. Because such information is confidential with respect to the general public, if the county attorney's office receives another request for this information from a different requestor, then the county attorney's office should again seek a ruling from this office.