



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 24, 2015

Mr. Jorge L. Trevino, Jr.  
Assistant County Attorney  
County of Webb  
1110 Washington Street, Suite 301  
Laredo, Texas 78040

OR2015-17620

Dear Mr. Trevino:

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# 576564.

The Webb County Sheriff's Office (the "sheriff's office") received two requests from the same requestor for information related to a specified incident, including all electronic documents, photographs, voice mails, and video recordings related to a specified lawsuit and employment files of individuals involved in the specified incident.<sup>1</sup> You state the sheriff's office does not have information responsive to a portion of the second request.<sup>2</sup> You claim the submitted information is excepted from disclosure under section 552.103 of the

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<sup>1</sup>You state the sheriff's office sought and received clarification of the request, in response to which the requestor withdrew a portion of the first request and narrowed two additional portions of the first request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Government Code.<sup>3</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note you did not submit any information responsive to the request for employment files of individuals involved in the specified incident. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this aspect of the request exists, we assume the sheriff's office has released it to the requestor. If the sheriff's office has not released any such information, it must do so. Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

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

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<sup>3</sup>Although you also raise section 552.108 of the Government Code, you make no arguments to support this exception. Therefore, we assume the sheriff's office has withdrawn its claim this section applies to the submitted information. See Gov't Code §§ 552.301.302.

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 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.” *Id.* In Open Records Decision No. 638 (1996), this office stated a governmental body has met its burden of showing litigation is reasonably anticipated by representing it received a notice-of-claim letter that is in compliance with the Texas Tort Claims Act (“TTCA”), chapter 101 of the Civil Practices and Remedies Code.

The sheriff’s office states the request for information includes a notice of claim and indicates the notice complies with the requirements of the TTCA. Thus, we find the sheriff’s office reasonably anticipated litigation when it received the request for information. We also find the sheriff’s office has established the submitted information is related to the anticipated litigation for purposes of section 552.103(a). Therefore, we find the sheriff’s office has established the applicability of section 552.103 of the Government Code to the submitted information. Thus, the sheriff’s office may withhold the submitted information under section 552.103(a) of the Government Code.

However, once the information has been obtained by all parties to the anticipated litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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, appearing to read 'J. Behnke', with a stylized flourish extending from the end.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 576564

Enc. Submitted documents

c: Requestor  
(w/o enclosures)