



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 29, 2015

John J. Janssen, J.D., Ph.D  
General Counsel  
Office of Legal Services  
Corpus Christi Independent School District  
P.O. Box 110  
Corpus Christi, Texas 78403-0110

OR2015-22727

Dear Dr. Janssen:

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# 585122.

The Corpus Christi Independent School District (the "district") received a request for (1) communications among named individuals pertaining to the requestor's client during a specified period of time, (2) emails containing the requestor's client's name in the subject line, and (3) specified information referencing the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

You state the district sought clarification of category 2 of the request for information, and the district has not yet received clarification on this portion of the request. *See id.* § 552.222 (providing that if request for information is unclear, governmental body may ask requestor

---

<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990). In this instance, you have submitted information you believe is responsive to category 2 and have made arguments against disclosure of this information. Thus, we assume the district has made a good-faith effort to relate this request to information the district holds, and we will address the applicability of your arguments to the information. However, the district has no obligation at this time to release any additional responsive information for which the district has not received clarification. If the requestor responds to the request for clarification, the district must seek a ruling from this office before withholding any additional responsive information from the requestor. *See City of Dallas*, 304 S.W.3d at 387.

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). The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception applies in a particular situation. The test for meeting this burden is a showing (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.); ORD 551

at 4. The governmental body must meet both parts of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

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, 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 Employment Opportunity Commission (“EEOC”) indicates litigation is reasonably anticipated. *See* Open Records Decisions Nos. 386 at 2 (1983), 336 at 1 (1982), 281 at 1 (1981).

You state, and provide documentation showing, the requestor’s client filed a discrimination claim with the EEOC prior to the district’s receipt of the instant request for information. The district states the claim is still pending and the submitted information is related to the anticipated litigation. Based on your representations and our review of the submitted information, we find the district reasonably anticipated litigation on the date this request was received. Further, we agree the submitted information relates to the anticipated litigation.

We note, however, the opposing party has seen or had access to some of the information at issue. 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, once the opposing party has seen or had access to information relating to the anticipated 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). Upon review, we find the information we have marked has been seen by the opposing party and may not be withheld under section 552.103. Therefore, with the exception of the information we have marked, the district may withhold the submitted information under section 552.103 of the Government Code.<sup>2</sup> We note the applicability of section 552.103(a) ends once the litigation has been concluded. *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/>

---

<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

[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,



Joseph Keeney  
Assistant Attorney General  
Open Records Division

JDK/dls

Ref: ID# 585122

Enc. Submitted documents

c: Requestor  
(w/o enclosures)