



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 6, 2010

Mr. Frank Waite
Assistant District Attorney
Dallas County District Attorney's Office
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2010-06558

Dear Mr. Waite:

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# 378296.

The Dallas County Human Resources Department (the "department") received a request for (1) written statements or complaints provided to the department, the Dallas County District Attorney's Office (the "district attorney"), and the special civil investigator appointed by the Commissioner's Court (the "investigator") pertaining to any civil or criminal investigation of the requestor and (2) written correspondence regarding such statements or complaints from the department, district attorney, and investigator, including investigative notes, provided to any current or former Dallas County employee or other person. You state the department does not have information responsive to the request for the investigator's documents.¹ You claim that the submitted representative sample of information is excepted from disclosure under sections 552.103, 552.107, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

Initially, you inform our office that the department does not have the documents generated or maintained by the investigator. You state that the instant request was directed to the

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. 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), 563 at 8 (1990), 555 at 1-2 (1990).

²We assume that 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.

department, which is not the custodian of records compiled or maintained by the investigator. You state that this portion of the requested information is maintained by the Dallas County Commissioners Court. Section 552.201(b) of the Government Code provides that “[e]ach elected county officer is the officer for public information and the custodian, as defined by Section 201.003, Local Government Code, of the information created or received by that county officer’s office.” Gov’t Code § 552.201(b). You represent that the proper custodian for the requested information to or from the investigator is the Dallas County Administrator. Based on your representations, we conclude that because the department does not maintain portions of the requested information and is not the proper custodian of such information, the Act does not require the department to respond to those portions of the request. This ruling only reaches the information that the department maintains.

Next, section 552.103 of the Government Code provides in 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 sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) that litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) that the information at issue is related to that litigation. See *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref’d n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. See Open Records Decision No. 551 at 4 (1990).

You inform us, and provide documentation showing, Dallas County was named as a defendant in a lawsuit styled *Alejandro Garcia v. Dallas County, Texas*, cause number 09-16600, which was filed in the 162nd Judicial District Court of Dallas County, Texas prior to the department’s receipt of the present request for information. Upon review, we conclude litigation was pending when the department received the request. Our review of the submitted information also shows it is related to the pending litigation for purposes

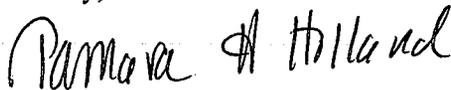
of section 552.103. Accordingly, we find the submitted information may be withheld under section 552.103 of the Government Code.³

We note, 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 the opposing parties in the pending 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 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/jb

Ref: ID# 378296

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining arguments.