



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2012

Ms. Myrna Reingold
Galveston County Legal Department
County Courthouse
722 Moody, 5th Floor
Galveston, TX 77550-2317

OR2012-14658

Dear Ms. Reingold:

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# 464950.

The Galveston County Sheriff's Office (the "sheriff's office") received a request for e-mails sent or received by a named officer containing a specified term during a specified time period.¹ You state the sheriff's office does not maintain any responsive information created prior to May of 2010.² You claim the submitted information is excepted from disclosure

¹We note the sheriff's office asked for and received clarification regarding this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); see *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).

²The 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), 452 at 3 (1986), 362 at 2 (1983).

under sections 552.103, 552.107, 552.108, 552.111, and 552.137 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they were created after the date the request was received. The sheriff's office need not release nonresponsive information in response to this request, and this ruling will not address that information.

Section 552.103 of the Government Code provides 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). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable 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 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, no pet.); *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).

³Although you also raise section 552.101 of the Government Code in conjunction with the attorney-client privilege under Texas Rule of Evidence 503 and the attorney work product privilege under Texas Rule of Civil Procedure 192.5, this office has concluded section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). In this instance your claims the submitted information is protected under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5 are properly addressed, respectively, under section 552.107, rather than rule 503, and section 552.111, rather than rule 192.5. ORD 676 at 3.

You state that prior to the sheriff's office's receipt of this request, litigation was pending against the sheriff's office in the United States District Court for the Southern District of Texas, Galveston Division, under Cause No. 3:11-CV-238. You explain the named officer is a party to the litigation as a consequence of his employment and the responsive information is related to the pending litigation because it pertains to the claims in the lawsuit. Upon review of your arguments and the information at issue, we find the responsive information relates to litigation that was pending when the sheriff's office received this request for information. Therefore, the sheriff's office may withhold the responsive information under section 552.103 of the Government Code.⁴

We note once information has been obtained by all parties to the pending 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 pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 464950

Enc. Submitted documents

c: Requestor
(w/o enclosures)