



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 17, 2013

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
Transactions Division
Travis County
P.O. Box 1748
Austin, Texas 78767-1748

OR2013-12241

Dear Ms. Winn:

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# 493625.

The Travis County Sheriff's Office (the "sheriff's office") received a request for correspondence and complaints related to a named individual's arrest. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the request because it was created after the date the sheriff's office received the request for information. This ruling does not address the public availability of any information that is not responsive to the request and the sheriff's office is not required to release such information in response to this request.

Section 552.103 of the Government Code provides, in relevant part, the following:

- (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 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).

You state the information at issue is related to pending civil litigation concerning the removal from office of the current district attorney. We note, however, the sheriff's office is not a party to the pending lawsuit and, therefore, does not have a litigation interest in the matter for purposes of section 552.103. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (stating predecessor to section 552.103 only applies when governmental body is party to litigation). In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. You have submitted a letter from the Travis County Attorney's Office (the "county attorney's office") that requests the responsive information be withheld under section 552.103. The county attorney's office informs us that it was involved in a civil removal lawsuit pending in Travis County District Court on the date the sheriff's office received the request for information. Based on these representations and our review, we agree litigation was pending on the date the request was received and the information at issue relates to this litigation. Therefore, the sheriff's office may withhold the responsive information under section 552.103 of the Government Code on behalf of the county attorney's office.¹

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

We note, however, 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 at 2 (1982), 320 (1982). 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 at 3 (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/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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 493625

Enc. Submitted documents

cc: Requestor
(w/o enclosures)