



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 8, 2013

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

OR2013-17434

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# 501556.

The Travis County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a named individual, including her calendar, access card use records, computer use information, and internet history, during specified time periods. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note portions of the submitted information were the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-15526 (2013). In that ruling, we determined the district attorney's office must rely on Open Records Letter No. 2013-13131 as a previous determination and withhold or release any identical information in accordance with that ruling, and may withhold the remaining responsive information under section 552.103 of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the district attorney's office may rely on Open Records Letter No. 2013-15526 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673

(2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the responsive information is not identical to information that was subject to Open Records Letter No. 2013-15526, we will consider your argument under section 552.103 of the Government Code.

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 purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See id.* § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) 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, 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). ORD 551 at 4.

You state, and provide documentation showing, prior to the district attorney's office's receipt of the instant request, lawsuits styled *The State of Texas v. Rosemary Lehmborg*, Cause No. D-1-GV-13-000421, and *The State of Texas v. Rosemary Lehmborg*, Cause No. D-1-GV-13-000511, were filed and are currently pending against the current district attorney in the District Courts of Travis County, Texas. You state the remaining information is

related to the pending litigation, which concerns the removal from office of the current district attorney. Upon review, we find the remaining information is related to litigation, to which the district attorney's office is a party as a consequence of the district attorney's employment, that was pending when the request for information was received. We therefore conclude the district attorney's office may withhold the remaining information under section 552.103 of the Government Code.

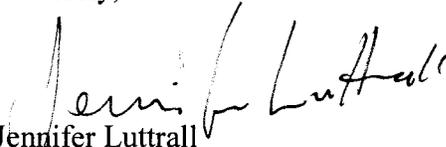
However, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to 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 been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the district attorney's office may continue to rely on Open Records Letter No. 2013-15526 as a previous determination and withhold or release any identical responsive information in accordance with that ruling. The district attorney's office may withhold the remaining information under section 552.103 of the Government Code.

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,


Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 501556

Enc. Submitted documents

c: Requestor
(w/o enclosures)