



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 2014

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

OR2014-20203

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# 542311.

Travis County Transportation and Natural Resources ("TNR") received a request for all documents from fourteen specified individuals related to a specified address over a specified time period, as well as certain other documents regarding the same specified address. You state some of the requested information will be provided to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code.¹ We have considered the submitted arguments and reviewed the submitted representative sample of information.²

¹Although you raise Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, we note the proper exceptions to raise when asserting the attorney-client and attorney work product privileges for information not subject to section 552.022 of the Government Code are sections 552.107 and 552.111 of the Government Code. *See* Open Records Decision Nos. 677 (2002), 676 at 6 (2002). Further, although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503 and 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, 575 at 2 (1990).

²We 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.

Initially, we note the information contained within the exhibit you labeled “Batch 2” is not responsive to the request for information because it was created after the date TNR received the request. This ruling does not address the public availability of any information that is not responsive to the instant request, and TNR need not release any such information in response to this request.

Section 552.103 states, 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). TNR 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 is pending or reasonably anticipated on the date TNR 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). TNR must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, prior to TNR’s receipt of the instant request, a lawsuit styled *Travis County v. Michael Kimbro*, Cause No. D-1-GN-14-001819, was filed in the 419th District Court in Travis County, Texas. Accordingly, we conclude litigation was pending at the time TNR received the request for information. You state, and we agree, the information at issue is related to the pending litigation for purposes of section 552.103. Thus, we find section 552.103 of the Government Code is generally applicable to the submitted information.³

We note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information related to litigation through the

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

discovery process. *See* ORD 551 at 4-5. If the opposing party has seen or had access to information related to pending or anticipated litigation, through discovery or otherwise, then there is no interest in withholding that information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). In this instance, you indicate the notice of violation you submitted is related to the pending investigation or prosecution. We note the recipient of the notice of violation is the defendant in the prosecution. Thus, as the opposing party in the litigation has already seen the notice of violation at issue, we conclude TNR may not withhold the notice of violation under section 552.103 of the Government Code. Accordingly, with the exception of the notice of violation at issue, which must be released, TNR may withhold the submitted information under section 552.103 of the Government Code until litigation concludes or is no longer pending.

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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 542311

Enc. Submitted documents

c: Requestor
(w/o enclosures)