



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 19, 2016

Ms. Lauren Downey
Assistant Attorney General
Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2016-23452

Dear Ms. Downey:

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# 631353 (PIR No. 16-44609).

The Office of the Attorney General (the "OAG") received a request for nine categories of information pertaining to specified lawsuits and legal proceedings. The OAG states it will release some responsive information to the requestor. The OAG claims the remaining requested information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the claimed exception and reviewed the submitted representative sample of information.²

¹The OAG informs us the requestor was required to make a deposit for payment of anticipated costs for the request under section 552.263 of the Government Code, which the OAG received on August 4, 2016. *See Gov't Code § 552.263(e)* (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond).

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.

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 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 is 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). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

The OAG states, at the time of the request, the OAG was involved in pending litigation representing its client agency, the Texas State Board of Veterinary Medical Examiners, in the cases described in the request at issue. Therefore, based on the OAG's representation, we conclude the OAG has established litigation was pending when the OAG received the request. Further, the OAG states, and we agree, the submitted information relates to the pending cases. Accordingly, the OAG may withhold the submitted information under section 552.103(a) of the Government Code.

However, once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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 Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 631353

Enc. Submitted documents

c: Requestor
(w/o enclosures)