



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 30, 2015

Ms. Patricia Fleming
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2015-19460A

Dear Ms. Fleming:

This office issued Open Records Letter No. 2015-19460 (2015) on September 17, 2015. Since that time, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on September 17, 2015. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")). This ruling was assigned ID# 592789.

The Texas Department of Criminal Justice (the "department") received a request for specified policies and procedures as well as several categories of information pertaining to the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note some of the submitted information, which we have marked, is not responsive to the request because it was created after the date of the instant request for

¹We 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 those records contain substantially different types of information than that submitted to this office.

information. This ruling does not address the public availability of that information, and the department need not release any non-responsive information.

Section 552.103 of the Government Code provides, 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). 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 under section 552.103(a). See ORD 551 at 4.

You state, and provide documentation demonstrating, a habeas corpus proceeding involving the requestor's client, styled *Campbell v. Stephens*, Civil Action No. 4:00-cv-03844, was pending in the United States District Court for the Southern District of Texas, Houston Division, prior to the department's receipt of this request for information. You also state the information you have marked pertains to the substance of the pending actions. Upon review, we agree the information at issue is related to litigation that was pending on the date the department received the present request for information. Therefore, we conclude the department may withhold the responsive information you have marked under section 552.103 of the Government Code.

However, once the information has been obtained by all parties to 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 the

litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

Section 552.134 of the Government Code relates to inmates of the department and provides in relevant part as follows:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

(b) Subsection (a) does not apply to:

...

(2) information about an inmate sentenced to death.

Gov't Code § 552.134(a), (b)(2). You state a portion of the information you have marked under section 552.134 pertains to the incarceration of the requestor's client as a general population inmate. You explain the information at issue was not created at a time the requestor's client was sentenced to death and the information at issue is not maintained in the inmate's death row file. Further, we find section 552.029 does not apply to this information. Therefore, we agree the information you have marked pertaining to the requestor's client as a general population inmate must be withheld under section 552.134. However, we find the remaining information you seek to withhold under section 552.134 pertains to a death row inmate. Section 552.134 is not applicable to an inmate who has been sentenced to death. *See id.* § 552.134(b)(2). Accordingly, the department may not withhold any of the remaining information under section 552.134.

In summary, the department may withhold the information you have marked under section 552.103 of the Government Code. The information you have marked pertaining to the requestor's client as a general population inmate must be withheld under section 552.134 of the Government Code. The remaining responsive information must be released.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.

²Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

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,

A handwritten signature in cursive script that reads "Paigelay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/dls

Ref: ID# 592789

Enc. Submitted documents

cc: Requestor
(w/o enclosures)