



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 24, 2017

Ms. Lindsey Wolf
General Counsel
Office of the Secretary of the State
P.O. Box 12697
Austin, Texas 78711-2697

OR2017-01553

Dear Ms. Wolf:

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# 642986.

The Office of the Secretary of the State (the "secretary's office") received a request for specified documents received by specified individuals. You claim the submitted information is excepted from disclosure under sections 552.103, 552.106, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the secretary's office previously provided the submitted information to a specified member of the Texas Legislature pursuant to section 552.008 of the Government Code. Section 552.008(b) provides, in part, as follows:

[A] governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with [the Act] if the requesting member, agency, or committee states that the public information is requested under [the Act] for legislative purposes.

Gov't Code § 552.008(b). We note that disclosure of excepted or confidential information to a legislator under section 552.008 does not waive or affect the confidentiality of the

information or the right to assert exceptions in the future regarding that information, and section 552.008 provides specific procedures relating to the confidential treatment of the information. *Id.* Accordingly, we will address the secretary's office's arguments against disclosure of the submitted information.

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.

Id. § 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 secretary's office states, and provides documentation showing, a lawsuit styled *Veasey, v. Abbott*, Civil Action No. 2:13-CV-00193, was pending against the secretary's office in the United States District Court of the Southern District of Texas, Corpus Christi Division, when it received the request for information. Therefore, we agree litigation was pending when the secretary's office received the request. We also find the secretary's office has established the submitted information is related to the pending litigation for purposes of section 552.103(a). Therefore, the secretary's office may withhold the submitted information under section 552.103(a) of the Government Code.¹

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

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 the 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,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/som

Ref: ID# 642986

Enc. Submitted documents

c: Requestor
(w/o enclosures)