



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 24, 2017

Ms. Ann-Marie Sheely
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2017-11335

Dear Ms. Sheely:

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# 661505.

The Travis County Fire Marshall's Office (the "county") received a request for the following categories of information pertaining to a named former employee: (1) specified records retention policies; (2) procedures and policies regarding "officers and reputations in the community"; (3) communications sent or received by the former employee regarding specified topics; (4) all e-mails between the former employee and another named individual; (5) the former employee's application for employment, resume, and curriculum vitae; and (6) any resignation, termination, or separation documents pertaining to her. The county claims the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the county submitted a subpoena, an employment application and related documents, and a letter of resignation, but no other information responsive to the request. Thus, we find the submitted information is not representative of the other types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the type of information the county has submitted for our review. This ruling does not authorize the county to withhold any information that is substantially different from the type of information the county submitted to this office. *See Gov't Code*

§ 552.302. Accordingly, to the extent any information responsive to the remainder of the request for information existed in the possession of the county when it received the request, we assume the county has released that information to the requestor. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If the county has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

The submitted information contains the Texas Commission on Law Enforcement (“commission”) identification number of a peace officer.¹ Section 552.002(a) of the Government Code defines “public information” as

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer’s commission identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner’s electronic database, and may be used as an access device

¹The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. *See* Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

number on the commission website. Accordingly, we find the commission identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the submitted commission identification number is not subject to the Act and the county is not required to release it.²

Next, we note the submitted information contains completed evaluations and a court-filed document that are subject to section 552.022(a) of the Government Code, which reads, in relevant part, as follows:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(17) information that is also contained in a public court record[.]

Id. § 552.022(a)(1), (17). Section 552.103 of the Government Code is discretionary and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the county may not withhold under section 552.103 the information that is subject to section 552.022, which we have marked.

The county asserts the remaining information is excepted from disclosure under section 552.103 of the Government Code, which provides in 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.

²As we are able to make this determination, we need not address your argument against the disclosure of this information.

...

(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 section 552.103 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 county informs us and provides documentation showing litigation styled *Travis County v. Brooks*, Cause No. D-1-GN-001940, was pending in the 53rd Judicial District Court of Travis County, Texas, when it received the request. Thus, we agree litigation was pending when the county received the request. Furthermore, we find the remaining information is related to the pending litigation for purposes of section 552.103. Therefore, the county may withhold the remaining information under section 552.103 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 the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

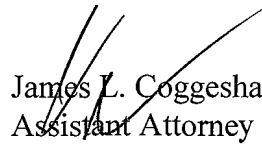
To conclude, the submitted commission identification number is not subject to the Act and the county is not required to release it. The county must release the information we have marked under section 552.022 of the Government Code. The county may withhold the remaining information under section 552.103 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 661505

Enc. Submitted documents

c: Requestor
(w/o enclosures)