



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 30, 2017

Ms. Lindsey Aston  
General Counsel  
Office of the Secretary of State  
P.O. Box 12697  
Austin, Texas 78711-2060

OR2017-14728

Dear Ms. Aston:

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# 664271.

The Office of the Secretary of State (the "secretary's office") received a request for communications of its Elections Division from a specified time period that contain a specified word.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.106, 552.107, 552.108, 552.111, 552.116, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

---

<sup>1</sup>You state the secretary's office sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>We 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 that you have marked a portion of one of the submitted e-mail chains as not responsive. Upon review, however, we find the information at issue is responsive to the request because it is contained within a responsive e-mail chain. We will therefore address your claimed exceptions for the entirety of the submitted information.

Section 552.103 of the Government Code provides 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). A 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 (1) litigation was 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). A governmental body 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 the secretary's office's receipt of the instant request, a lawsuit styled *Veasey v. Abbott*, Case No. 14-41127, was pending against the secretary's office in the United States District Court for the Southern District of Texas. Additionally, you state and provide documentation showing, prior to the secretary's office's receipt of the instant request, a lawsuit styled *Stringer v. Cascos*, Case No. 5:16-cv-00257, was pending against the secretary's office in the United States District Court for the Western District of Texas. Therefore, we agree litigation was pending on the date the secretary's office received the present request for information. You also state the submitted information pertains to the substance of the lawsuits' claims. Based on your representations and our review, we find the submitted information is related to the pending litigation. Therefore, we

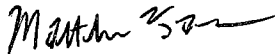
conclude the secretary's office may withhold the submitted information under section 552.103 of the Government Code.<sup>3</sup>

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. We also note that the applicability of section 552.103(a) ends when the litigation is concluded. Attorney General Opinion MW-575 (1982) at 2; 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](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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/bw

Ref: ID# 664271

c: Requestor

---

<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.