



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

August 16, 2017

Mr. Ricardo Vela, Jr.  
Assistant District Attorney  
Dallas County  
133 North Riverfront Boulevard LB-19  
Dallas, Texas 75207-4399

OR2017-18673

Dear Mr. Vela:

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# 673099.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for employment records pertaining to a named district attorney's office employee. You claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.117, 552.119, 552.130, 552.137, 552.139, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, you note the submitted information contains a Texas Commission on Law Enforcement ("TCOLE") identification number. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected,

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<sup>1</sup>We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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.

Gov't Code § 552.002. 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 a TCOLE identification number is a unique computer-generated number assigned to licensees for identification in TCOLE's electronic database and may be used as an access device number on the TCOLE website. Accordingly, we find the TCOLE identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification number is not subject to the Act, and the district attorney's office need not release it to the requestor.

Next, we note some of the information at issue is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he 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; [and]

...

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

Gov't Code § 552.022(a)(1), (17). The information at issue includes completed evaluations, which we marked, that are subject to section 552.022(a)(1). The district attorney's office must release the marked information pursuant to subsection 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. Additionally, the information at issue contains court-filed documents, which we marked, that are subject to section 552.022(a)(17), and must be released unless they are made confidential by the Act or other law. *Id.* § 552.022(a)(17). Although you raise section 552.103 of the Government Code for this information, this section is a discretionary exception to disclosure, 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 Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, none of the information subject to section 552.022(a) may be withheld under section 552.103 of the Government Code. However, we will consider your argument under section 552.103 of the Government Code, as well as the remaining exceptions you claim, against disclosure of the information not subject to section 552.022(a).

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, a post-conviction writ of habeas corpus proceeding styled *Ex parte Matthew Lee Johnson*, Cause No. WR-86,571-01, was pending before the 363rd Judicial District Court of Dallas County, Texas, when the district attorney's office received the instant request for information. You inform us the district attorney's office, as the prosecuting agency of the criminal case underlying the pending proceeding, is a party to any criminal litigation arising from the district attorney's office's prosecution of the case. You state the information at issue is related to the pending proceeding. Based on your representations, the submitted documentation, and our review of the information, we find litigation to which the district attorney's office's is a party was pending when the district attorney's office's received this request for information, and the submitted information is related to the pending litigation for the purposes of section 552.103. Therefore, the district attorney's office may withhold the remaining information under section 552.103(a) of the Government Code.<sup>2</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. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the TCOLE identification number is not subject to the Act, and the district attorney's office need not release it to the requestor. The district attorney's office must release the information we marked pursuant to sections 552.022(a)(1) and 552.022(a)(17) of the Government Code. The district attorney's office may withhold the remaining information under section 552.103(a) 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](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

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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 black ink, appearing to read "KH", is written over the word "Sincerely,".

Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/sb

Ref: ID# 673099

Enc. Submitted documents

c: Requestor  
(w/o enclosures)