



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 12, 2017

Ms. Jessica Marsh
General Counsel
Texas Civil Commitment Office
Building 2, Suite 350
4616 West Howard Lane
Austin, Texas 78728

OR2017-20875

Dear Ms. Marsh:

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# 675449.

The Texas Civil Commitment Office (the "TCCO") received a request for the TCCO's policy and procedure manuals, specified board administrative directives, specified records pertaining to the requestor, information pertaining to the requestor's request to have contact with a named individual, and the names of employees who attended a specified meeting. You state you do not possess some of the requested information.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.111, 552.130, and 552.137 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note the information submitted for Categories 4, 5, and 7 was the subject of a previous ruling from this office. In Open Records Letter No. 2017-19219 (2017), this office ruled: (1) the TCCO may withhold the information not subject to section 552.022(a)(1) of the Government Code under section 552.103 of the Government Code, and (2) the TCCO

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. We have no indication the law, facts, or circumstances upon which the prior ruling was based have changed. Accordingly, the TCCO may rely on Open Records Letter No. 2017-19219 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will consider the arguments you raise for the information not encompassed by the prior ruling.

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 claiming section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information, and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

The TCCO states, and provides documentation showing, prior to its receipt of the instant request, a lawsuit styled *Richards v. Office of Violent Sex Offender Management*, Cause No. 4:13-CV-01394, was filed and is currently pending against former employees of the TCCO in their official capacities in the United States District Court for the Southern District of Texas. Therefore, we agree litigation was pending on the date the TCCO received the

present request for information. The TCCO also states the information at issue is related to the substance of the lawsuit's claims. Based on the TCCO's representations and our review, we find the information at issue is related to the pending litigation. Therefore, we conclude the TCCO may withhold the remaining information under section 552.103 of the Government Code.²

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. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the TCCO may rely on Open Records Letter No. 2017-19219 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. The TCCO 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/eb

²As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

Ref: ID# 675449

Enc. Submitted documents

c: Requestor
(w/o enclosures)