



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 20, 2017

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

OR2017-21543

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# 677677.

The Travis County Sheriff's Office (the "sheriff's office") received a request for information pertaining to the requestor's arrest and the sheriff's office's fingerprinting policy, restraint chair policy, and intake policies and procedures. The sheriff's office states it has released some information to the requestor. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

Initially, the sheriff's office states some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2017-16241 (2017). In that ruling, we determined the sheriff's office (1) may withhold some information under section 552.108(b)(1) of the Government Code, (2) must withhold some information under section 552.101 of the Government Code in conjunction with the Medical Practice Act to the extent the information at issue constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician or someone under the supervision of a physician, and (3) must release the remaining information. We have no indication there has been any change in the

¹We 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 those records contain substantially different types of information than that submitted to this office.

law, facts, or circumstances on which the previous ruling was based. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the sheriff's office must rely on Open Records Letter No. 2017-16241 as a previous determination and withhold or release the identical 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the instant request is not identical to the information responsive in Open Records Letter No. 2016-16241, we will address the sheriff's office's arguments against disclosure.

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 sheriff's office states, and provides documentation showing, prior to its receipt of the instant request, a lawsuit styled *Fowler v. Stanford*, Cause No. J5-CV-17-245854, was filed and is currently pending against a sheriff's office deputy in the Justice Court, Precinct Five of Travis County, Texas. Therefore, we agree litigation was pending on the date the sheriff's office received the present request for information. The sheriff's office also states the

information at issue pertains to the substance of the lawsuit claims. Based on the sheriff's office's representations and our review, we find the information at issue is related to the pending litigation. Therefore, we conclude the sheriff's office may withhold the submitted 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 concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the sheriff's office must rely on Open Records Letter No. 2017-16241 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the information in the instant request is not identical to the information responsive in Open Records Letter No. 2016-16241, we conclude the sheriff's office may withhold the submitted 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/t dw

²As our ruling is dispositive, we need not address the sheriff's office's remaining argument against disclosure of the submitted information.

Ref: ID# 677677

Enc. Submitted documents

c: Requestor
(w/o enclosures)