



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 10, 2017

Mr. J. R. Harris
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2017-25833

Dear Mr. Harris:

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# 683586 (C.A. File No. 17PIA0510).

The Harris County Sheriff's Office (the "sheriff's office") received a request for records pertaining to individuals booked in the Harris County jail during a specified time period. You claim the submitted information is not subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have also received comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

You contend the submitted information constitutes records of the judiciary. The Act generally requires the public disclosure of information maintained by a "governmental body." *See id.* § 552.002(a)(1). While the Act's definition of a "governmental body" is broad, it specifically excludes the judiciary. *See id.* § 552.003(1)(B). Information "collected,

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

assembled, or maintained by or for the judiciary” is not subject to the Act but instead is “governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov’t Code § 552.003(1)(B) prior to enactment of Gov’t Code § 552.0035). In determining whether a governmental entity falls within the judiciary exception of the Act, this office looks to whether governmental entity maintains the relevant records as an agent of the judiciary in regard to judicial, as opposed to administrative functions. *See* Open Records Decision No. 646 at 2-3 (1996) (citing *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ)). Upon review, we find you have failed to demonstrate the requested information consists of judicial records maintained by the sheriff’s office on behalf of the judiciary. Therefore, this information is subject to the Act and may only be withheld if it is excepted from disclosure under the Act.

Section 552.103 of the Government Code provides in relevant 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.

(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 complaint styled *O’Donnell, et al. v. Harris County, Texas, et al*, Case No. 4:16-cv-1414, was pending against the sheriff’s office in the United States District Court for the Southern District of Texas when it received the instant request for information. You state the information at issue is related to the pending lawsuit. Based on your representations, the submitted documentation, and our review of the information at issue, we find litigation was pending when the sheriff’s office received this

request for information, and the information at issue is related to the pending litigation for the purposes of section 552.103. Therefore, the sheriff's office may withhold the submitted information under section 552.103(a) 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. 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).

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/gw

Ref: ID# 683586

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.