



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 6, 2017

Ms. Sue Jana
Assistant Criminal District Attorney
Bexar County Criminal District Attorney - Civil Section
101 West Nueva Street, 7th Floor
San Antonio, Texas 78205

OR2017-27703

Dear Ms. Jana:

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# 686864 (PIR# 2203, DA File No. 6030).

The Bexar County Sheriff's Office (the "sheriff's office") received a request for disciplinary files for two named employees and one former employee as well as a copy of the sheriff's office's standard operating procedure for the criminal investigation division. You state the sheriff's office has released some information. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 section 552.103(a) 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. *See 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). *See* ORD 551.

This office has long held “litigation,” for purposes of section 552.103, includes “contested cases” conducted in a quasi-judicial forum. *See* Open Records Decision Nos. 474 (1987), 368 (1983), 336 (1982), 301 (1982). In determining whether an administrative proceeding is conducted in a quasi-judicial forum, some of the factors this office considers are whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See* Open Records Decision No. 588 (1991).

You state, and submit documentation showing, prior to the date the sheriff's office received the instant request, the Deputy Sheriff's Association (the “association”) submitted an invocation of arbitration against the sheriff's office appealing the requestor's termination. You inform us the arbitration will be governed by the Collective Bargaining Agreement (the “agreement”) between the association, the sheriff's office, and Bexar County. You further inform us that under the agreement the parties are represented by counsel, the parties may request discovery from each other, the arbitrator may subpoena witnesses, the arbitrator is the judge of which charges are true and the particular rules violated, and the arbitrator's decision is final and binding such that neither party may appeal the decision unless it was procured by fraud or other unlawful means. Thus, you argue the arbitration constitutes litigation of a judicial or quasi-judicial nature for purposes of section 552.103. *See generally* ORD 301 (discussing meaning of “litigation” under predecessor to section 552.103).

Based on your representations and our review, we find you have demonstrated arbitration under the agreement is conducted in a quasi-judicial forum and, thus, constitutes litigation for purposes of section 552.103. You explain the requested information relates to the pending litigation because it relates to individuals with knowledge of the requestor's termination. Accordingly, we find litigation was pending when the sheriff's office received

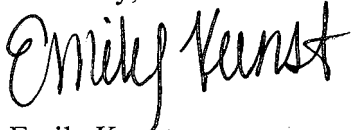
the request for information and the submitted information is related to the pending litigation for the purposes of section 552.103. Therefore, the sheriff's office may withhold the submitted information under section 552.103 of the Government Code.

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 anticipated 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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/tdw

Ref: ID# 686864

Enc. Submitted documents

c: Requestor
(w/o enclosures)