



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 24, 2018

Mr. Michael W. Dixon
Counsel for City of Riesel
Haley Olson
100 Ritchie Road, Suite 200
Waco, Texas 76712-8544

OR2018-01536

Dear Mr. Dixon:

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# 693006.

The City of Riesel (the "city"), which you represent, received a request for fifteen categories of information pertaining to policies of the city and named individuals. The city states it does not have some of the requested information.¹ The city claims the submitted information is either not subject to the Act or 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.

Initially, we note the city only submitted communications between a city prosecutor and a municipal judge, but not police car titles, insurance cards, or any other types of requested information. Thus, we find the submitted information is not representative of the other types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the type of information the city has submitted for our review. This ruling does not authorize the city to withhold any information that is substantially different from the type of information the city submitted to this office. *See Gov't Code*

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *See generally Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

§ 552.302. Accordingly, to the extent any information responsive to the remainder of the request for information existed in the possession of the city when it received the request, we assume the city has released that information to the requestor.² *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

The Act generally requires the public disclosure of information maintained by a "governmental body." *See* Gov't Code § 552.002(a)(1). However, the Act's definition of a "governmental body" "does not include the judiciary." *See id.* § 552.003(1)(B). Information "collected, 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)). The city asserts the submitted documents are judicial records because they consist of communications between a city prosecutor and a municipal judge that pertain to a municipal court case. However, the request for information went to the city, not the city's municipal court, and you represent the information at issue consists of communications of the city prosecutor pertaining to "City Business[.]" Upon review, we find the city has failed to establish the submitted information consists of records of the judiciary. Therefore, we conclude the submitted information is subject to the Act and we will address the city's arguments to withhold the information under on that ground.

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.

...

²We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

(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 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 that (1) litigation is 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). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

The city states the requestor is a defendant in a pending municipal court case. The city also indicates the submitted information pertains to that pending case, as the communications at issue are between the prosecutor and judge in the requestor's criminal case, and the submitted information could be used to attack the credibility or character of these individuals. Based on the city's representations and our review of the information at issue, we conclude the city may withhold the submitted information under section 552.103 of the Government Code.³

However, once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.


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

³As our ruling is dispositive, we do not address the other argument of the city to withhold 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tdw

Ref: ID# 693006

Enc. Submitted documents

c: Requestor
(w/o enclosures)