



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 1, 2018

Mr. James R. Palomo
Assistant District Attorney
Dallas County
411 Elm Street, 5th Floor
Dallas, Texas 75202-3317

OR2018-04792

Dear Mr. Palomo:

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# 698997.

Dallas County (the "county") received a request for information pertaining to a specified type of agreement during a specified time period and communications regarding the specified agreement over a specified period of time.¹ You state the county does not have information responsive to a portion of the request.² You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code.

¹We note the county sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). We further note the requestor modified her request in response to a cost estimate. *See* Gov't Code § 552.263(e-1) (modified request is considered received on the date the governmental body receives the written modification).

²The 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).

Further, you state release of the submitted information may implicate the interests of the U.S. Immigration and Customs Enforcement and the U.S. Marshals Service. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue should not be released.³ *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, you assert, and we agree, Exhibit B is not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request and the county is not required to release such information in response to this request.⁴

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

³As of the date of this ruling, we have not received arguments from either party.

⁴As we are able to make this determination, we need not address your arguments against disclosure of this information.

met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

You state prior to the county's receipt of the instant request, a lawsuit styled *Mercado v. Dallas County*, Cause No. 3:15-CV-03481-D, was filed and is currently pending. Therefore, we agree litigation was pending on the date the county received the present request for information. You assert Exhibits A and C relate to the subject matter of the pending litigation. Based on your representations and our review, we find Exhibits A and C are related to the pending litigation. Therefore, we conclude the county may withhold Exhibits A and C under section 552.103 of the Government Code.⁵

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).

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/tdw

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Ref: ID# 698997

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)