



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 4, 2019

Ms. Kristen Lee
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2019-03149

Dear Ms. Lee:

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#748930 (ORR 18PIA0913).

Harris County Public Health, Harris County Pollution Control, Harris County Tax Office, and the Harris Health System (collectively, the “county”) received six requests from the same requestor for several categories of information pertaining to specified vehicles, certain federal and state laws, and pollution standards. The county states it does not have information responsive to a portion of the request.¹ The county claims the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception the county claims and reviewed the submitted representative sample of information.²

Initially, you state the county sought clarification from the requestor for a portion of the requests for information. *See* Gov’t Code § 552.222 (providing that if request for

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We assume that 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.

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 over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You inform us the county has not yet received a response to the request for clarification. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990). In this instance, the county has submitted information it believes is responsive to the requests and made arguments against disclosure of this information. Thus, we assume the county has made a good-faith effort to relate the requests to information it holds. However, the county has no obligation at this time to release any additional responsive information for which it has not received clarification. If the requestor responds to the request for clarification, the county must seek a ruling from this office before withholding any additional responsive information from the requestor. *See* Gov't Code § 552.222(b); *City of Dallas*, 304 S.W.3d at 387.

Section 552.103 of the Government Code provides 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 that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (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).

The county states, and submits documentation demonstrating, a lawsuit styled *Harris County, Texas vs. Volkswagen Group of America, Inc.*, Cause No. 2015-57864, was pending

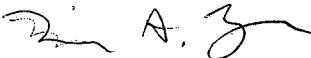
in the 234th Judicial District Court of Harris County, Texas, when the county received the instant requests for information. The county further states the submitted information is related to the pending litigation. Upon review of the county's arguments and the information at issue, we find submitted information relates to litigation to which the county was a party that was pending when the county received the requests for information. Accordingly, the county may withhold the submitted information under section 552.103 of the Government Code.

We note 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 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,



Nick Ybarra
Assistant Attorney General
Open Records Division

NY/eb

Ref: ID# 748930

Enc. Submitted documents

c: Requestor
(w/o enclosures)