



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 3, 2019

Mr. Sharbel Sfeir
Assistant General Counsel
Texas Department of Criminal Justice
P. O. Box 4004
Huntsville, Texas 77342-4004

OR2019-11822

Dear Mr. Sfeir:

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# 763579 (OGC#PP0098).

The Texas Department of Criminal Justice (the "department") received a request for specified reports submitted by a named employee. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information may have been the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter Ruling No. 2019-02915 (2019). In that ruling, we determined the department: (1) may withhold the information we marked under section 552.108(b)(1) of the Government Code; (2) must withhold the information we marked under section 552.117(a)(3) of the Government Code; (3) must withhold the information we marked under section 552.134 of the Government Code; and (4) must release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the department must continue to rely on Open Records Letter Ruling No. 2019-02915 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as

was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not subject to the previous ruling, we will address your arguments against release of the submitted information.

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 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 lawsuit styled *Cervantez v. Collier*, Cause No. 1:18-CV-1059, was pending against the department in the United States District Court, Western District of Texas, Austin Division when it received the instant request for information. You state the submitted information is related to the pending lawsuit. Based on your representations, the submitted documentation, and our review of the submitted information, we find litigation was pending when the department received this request for information, and the submitted information is related to the pending litigation for the purposes of section 552.103. Therefore, the department may withhold the submitted information under section 552.103(a) of the Government Code.¹

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

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).

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the department must continue to rely on Open Records Letter Ruling No. 2019-02915 as a previous determination and withhold or release the information at issue in accordance with that ruling. To the extent the submitted information is not subject to the prior ruling, the department may withhold it under section 552.103 of the Government Code.

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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/jxd

Ref: ID# 763579

Enc. Submitted documents

c: Requestor
(w/o enclosures)