



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 29, 2019

Mr. Adam Bitter
General Counsel
Office of the Secretary of State
P.O. Box 12697
Austin, Texas 78711-2697

OR2019-14210

Dear Mr. Bitter:

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# 767796.

The Office of the Secretary of State (the "secretary's office") received a request for all communications between the secretary's office and a named entity during a specified time period. You claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.103 and 552.136 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you argue some of the submitted information is not "public information" subject to disclosure under the Act. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You argue the file names and locations you marked consist of information used solely as tools for the maintenance, manipulation, or protection of public property and has no other significance. Based on the reasoning in that decision and our review of the information at issue, we determine the information you marked does not constitute public information under section 552.002. Accordingly, the file names and locations at issue are not subject to the Act, and the secretary's office is not required to release this information in response to this request.¹

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.

¹As we are able to make this determination, we need not address your remaining arguments against disclosure of this 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, three lawsuits were pending against the secretary's office in United States District Courts on the date it received the request for information. You inform us the lawsuits at issue are styled *Garibay v. Whitley*, Cause No. 2:19-cv-00040; *Texas League of United Latin American Citizens v. Whitley*, Cause No. 5:19-cv-00074-FB; and *MOVE Texas Civic Fund v. Whitley*, Cause No. 3:19-cv-00041. You state the information at issue is directly related to the pending lawsuits. Based on your representations, the submitted documentation, and our review of the information, we find litigation was pending when the secretary's office received this request for information, and the information at issue is related to the pending litigation for the purposes of section 552.103. Therefore, the secretary's office may withhold the remaining information under section 552.103(a) 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 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, the file names and locations you marked are not subject to the Act, and the secretary's office is not required to release this information in response to this request. The secretary's office may withhold the remaining information under section 552.103(a) 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,

A handwritten signature in black ink, appearing to read 'KH' followed by a stylized flourish.

Kieran Hillis
Assistant Attorney General
Open Records Division

KH/mo

Ref: ID# 767796

Enc. Submitted documents

c: Requestor
(w/o enclosures)