



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 21, 2019

Ms. DeAnne Lin
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2019-16985

Dear Ms. Lin:

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# 771595 (ORR# 19PIA0274).

The Harris County Judge's Office (the "county judge's office") received a request for e-mails sent or received by a named county official during a specified time period containing specified terms. The county judge's office states it is releasing some of the requested information. The county judge's office claims the submitted information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the exception the county judge's office claims and reviewed the submitted information.

¹The county judge's office acknowledges it did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b). Therefore, the county judge's office has failed to establish a compelling reason to address its claim under section 552.103 of the Government Code. *See id.* §§ 552.007, .302, .304, .352; *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). However, the need of a governmental entity other than the agency that is seeking an open records decision to withhold information under section 552.103 of the Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 at 3 (1991). Accordingly, we will consider whether the county judge's office may withhold the submitted information on behalf of another governmental entity.

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.

...

(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 county judge's office states, and provides documentation showing, a lawsuit styled *Harris County, Texas, v. Intercontinental Terminals Company, L.L.C.*, Cause No. 2019-21671, was pending in the 80th District Court of Harris County, Texas, when the county received the request for information. Therefore, we agree litigation was pending when the county judge's office received the request. The county judge's office acknowledges it has waived its claim under section 552.103. See Gov't Code §§ 552.301(e), .302. In such a situation, we require an affirmative representation from a governmental body with a litigation interest demonstrating the governmental body wants the information at issue withheld from disclosure under section 552.103. The county judge's office has provided a representation from the Harris County Attorney's Office (the "county attorney's office"), which is a party to the litigation, that the county attorney's office objects to release of the submitted information. We also find the submitted information is related to the pending litigation for purposes of section 552.103(a). Therefore, the county judge's office may withhold the submitted information under section 552.103(a) of the Government Code on behalf of the county attorney's office.

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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/be

Ref: ID# 771595

Enc. Submitted documents

c: Requestor
(w/o enclosures)