



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 27, 2019

Ms. Dylbia L. Jefferies Vega  
Civil Legal Division  
Cameron County Commissioners Court  
1100 East Monroe Street  
Brownsville, Texas 78520

OR2019-17712

Dear Ms. Vega:

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# 772822.

The Cameron County Human Resources Department and the Cameron County District Attorney's Office (collectively, the "county") received a request for the personnel files of named former or current county employees. The county argues, pursuant to section 552.028 of the Government Code, it need not accept or comply with the request for information.<sup>1</sup> Alternatively, the county claims the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the county's arguments and reviewed the submitted information.

Section 552.028 of the Government Code provides, in relevant part:

(a) A governmental body is not required to accept or comply with a request for information from:

- (1) an individual who is imprisoned or confined in a correctional facility; or
- (2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

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<sup>1</sup>Although the county cites section 552.208(a) of the Government Code, based on the county's briefing and arguments, we understand it to raise section 552.028 of the Government Code.

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Gov't Code § 552.028. The county claims since the requestor is an agent of an incarcerated individual, it is not required to accept or comply with the request for information. *See id.* § 552.028(c) ("correctional facility" is a place for the confinement of a person arrested for, charged with, or convicted of a criminal offense). However, we note, section 552.028(a)(2) creates an exception for an agent who is the attorney for an incarcerated individual and the request is for information subject to disclosure under the Act. In this instance, the requestor is a paralegal with the Capital Habeas Unit of the Federal Public Defender for the Northern District of Texas, which has been appointed to represent the incarcerated individual at issue. As such, she represents the attorney for the incarcerated individual, and section 552.028 authorizes the requestor to request information on behalf of the client. Thus, we conclude section 552.028 of the Government Code does not permit the county to decline to accept or comply with this request.

Next, we note the submitted information contains Texas Commission on Law Enforcement ("TCOLE") identification numbers. 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. 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. We understand a TCOLE identification number is a unique computer-generated number assigned to licensees for identification in TCOLE's electronic database and may be used as an access device number on the TCOLE

website. Accordingly, we find the TCOLE identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification numbers in the submitted information are not subject to the Act, and the county need not release them to the requestor.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

*Id.* § 552.022(a)(1). We note portions of the submitted information consist of completed evaluations. This information, a representative sample of which we have marked, is subject to section 552.022(a)(1). The county must release the information subject to section 552.022(a)(1), unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although the county raises section 552.103 of the Government Code for the information at issue, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See 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). Therefore, the county may not withhold the information subject to section 552.022(a)(1) under section 552.103 of the Government Code. As the county raises no further exceptions to disclosure of this information, the county must release the information we marked under section 552.022(a)(1) of the Government Code. However, we will consider the county's arguments under section 552.103 of the Government Code for the information not subject to section 552.022.

Section 552.103 of the Government Code provides, in 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). 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).

The county states a post-conviction writ of habeas corpus proceeding was pending when the county received the instant request for information. As the prosecuting agency of the criminal case underlying the pending proceeding, the county represents it is a party to any litigation arising from the prosecution of the case. The county states the information at issue is related to the pending proceeding. Based on these representations, the submitted documentation, and our review of the information at issue, we find litigation was pending when the county 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 county may withhold the remaining information under section 552.103(a) of the Government Code.<sup>2</sup>

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 TCOLE identification numbers in the information at issue are not subject to the Act, and the county need not release them to the requestor. The county must release the information we marked pursuant to section 552.022(a)(1) of the Government Code. The county 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.

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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](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,



Lecelle Clarke  
Attorney  
Open Records Division

LC/gw

Ref: ID# 772822

Enc. Submitted documents

c: Requestor  
(w/o enclosures)