



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 8, 2019

Ms. Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2019-18399

Dear Ms. Downey:

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# 770564 (OAG PIR No. R000816).

The Office of the Attorney General (the "OAG") received a request for communications regarding a certain advisory, including internal communications and communications with three named state agencies, specified individuals, specified state officials, a specified administration, and specified types of third parties. You state the OAG will release some of the requested information with redactions allowed by law. Additionally, you state the OAG will continue to rely on Open Records Letter No. 2019-10017 (2019) with respect to some of the requested information.¹ You claim the remaining requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.²

¹In Open Records Letter No. 2019-10017, this office determined the OAG may withhold certain information under section 552.103 of the Government Code and may withhold the remaining information at issue under section 552.108(a)(1) of the Government Code. *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).

²This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Initially, we note the request in this instance is made on behalf of the United States House of Representatives Committee on Oversight and Reform. You state the OAG is responding to the request pursuant to the Act. *See* Open Records Decision No. 44 at 2 (1974) (a written communication that reasonably can be judged to be a request for public information is a request for information under the Act). A governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. *See* Open Records Decision No. 561 (1990). Additionally, this office is statutorily bound to issue an open records decision after receiving a request for a ruling from a governmental body. *See* Gov't Code § 552.306(a) (requiring this office to “promptly render a decision requested under [the Act], consistent with the standards of due process, determining whether the requested information is within one of the exceptions of [the Act]”); *see also* *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152, 157 (Tex. App.—Austin 2001, no pet.) (noting Act requires this office to determine what information is excepted from disclosure); Open Records Decision No. 687 at 3 (2011) (noting section 552.306 directs this office “in mandatory language” to rule when a governmental body requests an open records ruling). The OAG received a request for information for which it requested a decision about whether the responsive information is subject to an exception under the Act. *See* Gov't Code § 552.301. Therefore, pursuant to the Act, this office must issue a ruling on whether the information at issue may be withheld under the Act. Accordingly, we will consider the OAG's arguments against disclosure of the submitted information.

Section 552.103 of the Government Code provides, in part, the following:

(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.

Id. § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate 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 the pending or anticipated litigation. *See 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).

You explain the OAG is representing the State of Texas and two of the OAG's client agencies in litigation, which was pending prior to the OAG's receipt of the present request for information. Based upon your representations and our review, we find litigation involving the OAG was pending on the date it received the present request for information. Further, you state, and we agree, the information at issue relates to the pending litigation. Accordingly, we conclude the OAG may withhold the information at issue under section 552.103.

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,



Justin Gordon
Assistant Attorney General
Open Records Division

JG/eb

Ref: ID# 770564

Enc. Submitted documents

c: Requestor
(w/o enclosures)