



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 24, 2019

Ms. Amy Bass-Domel
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2019-20177

Dear Ms. Bass-Domel:

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# 776787.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for the jail file of the requestor and specified policies. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you note a portion of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2018-20732 (2018). In that ruling, we ruled the sheriff's office may withhold the information we marked under section 552.108(b)(1) of the Government Code and must release the remaining information. The sheriff's office now seeks to withhold the information that was previously ordered released under section 552.103 of the Government Code. Section 552.007 of the Government Code provides that, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See Gov't Code* § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the sheriff's office may not now withhold any previously released information unless its release is expressly prohibited by law or the information is

confidential under law. Although the sheriff's office now raises section 552.103 of the Government Code for the information at issue, this section does not prohibit the release of information or make information confidential. *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 section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, the sheriff's office may not now withhold any of the previously released information under section 552.103 of the Government Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, we conclude the sheriff's office may rely on Open Records Letter No. 2018-20732 as a previous determination and withhold or release the identical information in accordance with that ruling.¹ *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). However, we will consider your arguments for the information not subject to the previous ruling.

Next, we note some of the remaining 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:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The remaining information includes information in an account, voucher, or contract relating to the receipt or expenditure of funds by a governmental body that is subject to section 552.022(a)(3). This information must be released unless it is made confidential under the Act or other law. *See id.* The sheriff's office seeks to withhold the information subject to section 552.022(a)(3) under section 552.103 of the Government Code. We note section 552.103 is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit*, 4 S.W.3d at 475-76 (governmental body may waive section 552.103); ORDs 665 at 2 n.5 (discretionary exceptions generally), 663 at 5 (waiver of discretionary exceptions). Therefore, the sheriff's office may not withhold any of the information subject to section 552.022(a)(3), which we marked, under section 552.103. As you raise no other exceptions to disclosure of the information subject to section 552.022(a)(3), it must be released pursuant to section

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

552.022(a)(3) of the Government Code. However, we will address your arguments against disclosure of the remaining 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).

The sheriff's office states a petition of writ of mandamus styled *Reposa v. Williamson County*, Cause No. 17-1441-C26, was pending against the sheriff's office in the 26th Judicial District Court of Williamson County, Texas, when it received the instant request for information. You state the remaining information is related to the pending litigation. Based on your representations, the submitted documentation, and our review of the remaining information, we find litigation was pending when the sheriff's office received this request for information, and the remaining information is related to the pending litigation for the purposes of section 552.103. Therefore, the sheriff's office may withhold the remaining information under section 552.103(a) of the Government Code.²

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

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

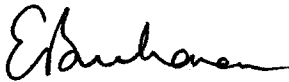
has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the sheriff's office may rely on Open Records Letter No. 2018-20732 as a previous determination and withhold or release the identical information in accordance with that ruling. The information we marked must be released pursuant to section 552.022(a)(3) of the Government Code. The sheriff'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,



Emily Buchanan
Attorney
Open Records Division

EB/jxd

Ref: ID# 776787

Enc. Submitted documents

c: Requestor
(w/o enclosures)