



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 11, 2019

Mr. Eric Miller
Assistant General Counsel
Texas Department of Criminal Justice
P. O Box 4004
Huntsville, Texas 77342-4004

OR2019-25406

Dear Mr. Miller:

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# 785175 (OGC# PP0137).

The Texas Department of Criminal Justice (the "department") received a request for any and all e-mails, text messages, or other communications that mention a named inmate or inmate number and were sent or received by specified department officials during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.134 of the Government Code provides, in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the [department] is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.134(a). Section 552.134 is explicitly made subject to section 552.029, which provides, in relevant part, the following:

Notwithstanding Section . . . 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021:

...

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Id. § 552.029(8). Upon review, we agree the submitted information constitutes information about an inmate for purposes of section 552.134. Although section 552.134(a) is generally applicable to the information at issue, we note the information pertains to an inmate's death in custody. Therefore, the department must release basic information about the inmate's death pursuant to section 552.029(8). The basic information that must be released includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. Accordingly, with the exception of basic information under section 552.029(8), the department must withhold the submitted information under section 552.134 of the Government Code.²

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.

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

Id. § 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). See ORD 551.

You argue the remaining information is related to pending litigation against the department. You state, prior to the department's receipt of the instant request, a lawsuit styled *Sain v. Collier*, Cause No. 4:18-CV-04412, was filed against the department in the United States District Court for the Southern District of Texas, Houston Division. You also state the information at issue is related to the pending lawsuit. Based upon these representations and our review, we find litigation was pending on the date the department received the instant request for information, and the information at issue is related to the pending litigation for the purposes of section 552.103. Accordingly, we agree the department may withhold the remaining information under section 552.103(a) of the Government Code.³

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 concluded. See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 at 3 (1982).

In summary, with the exception of the basic information subject to section 552.029(8) of the Government Code, the department must withhold the submitted information under section 552.134 of the Government Code. The department may withhold the basic information subject to section 552.029(8) of the Government Code under section 552.103 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open

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Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "James M. Graham". The signature is fluid and cursive, with the first name "James" and last name "Graham" clearly legible.

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jxd

Ref: ID# 785175

Enc. Submitted documents

c: Requestor
(w/o enclosures)