



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 4, 2019

Mr. James C. Tidwell  
Counsel for Fannin County  
Wolfe, Tidwell & McCoy, LLP  
320 North Travis Street, Suite 205  
Sherman, Texas 75090

OR2019-31031

Dear Mr. Tidwell:

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# 793859.

The Fannin County Sheriff's Office (the "sheriff's office"), which you represent, received six requests from the same requestor for three categories of information pertaining to six named individuals. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See Gov't Code* § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note some of the submitted information is not responsive to the present request because it does not pertain to any of the information requested by the requestor. This ruling does not address the public availability of the non-responsive information, which we marked, and the sheriff's office need not release it in response to this request.

Next, you state some of the responsive information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2019-29207A (2019). In that ruling, we determined the sheriff's office must release certain information pursuant to section 552.022(a)(1) of the Government Code, but may withhold the remaining 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, the sheriff's office must continue to rely on Open Records Letter No. 2019-29207A as a previous determination and withhold or release the information at issue in accordance with that ruling.<sup>1</sup> 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).

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 section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing 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 that 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). See ORD 551.

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. See Open Records Decision No. 452 at 4 (1986). To establish litigation is reasonably anticipated, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *Id.* This office has stated a pending complaint with the Equal Employment Opportunity Commission (the "EEOC") indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982).

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<sup>1</sup> As our ruling is dispositive, we need not address your arguments against disclosure for this information.

You state, and provide documentation showing, prior to the sheriff's office's receipt of the instant request for information, the requestor filed a discrimination claim against the sheriff's office with the EEOC. You state the remaining responsive information is directly related to the anticipated litigation. Based on your representations and our review of the information at issue, we find the sheriff's office reasonably anticipated litigation on the date the request was received. Therefore, the sheriff's office may withhold the remaining responsive information under section 552.103 of the Government Code.<sup>2</sup>

In summary, the sheriff's office must continue to rely on Open Records Letter No. 2019-29207A as a previous determination and withhold or release the information at issue in accordance with that ruling. The sheriff's office may withhold the remaining responsive information 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 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,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/gw

Ref: ID# 793859.

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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