



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 5, 2019

Mr. Juan A. Roque  
Assistant District Attorney  
Bexar County  
101 West Nueva Street, 7<sup>th</sup> Floor  
San Antonio, Texas 78205

OR2019-31155

Dear Mr. Roque:

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# 795555 (File No. 7732 – DA (R001702)).

Bexar County (the "county") received a request for all time and expense records pertaining to the county's contingency fee contract for legal services related to opioid litigation.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. Additionally, you state release of some of this information may implicate the proprietary interests of Phipps, Deacon, Purnell, PLLC (the "special counsel"). Accordingly, you state you notified the special counsel of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from the special counsel. We have considered the submitted arguments and reviewed the submitted information.

---

<sup>1</sup> We note the county sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

Initially, we understand you to assert the requested time and expense records are not subject to the Act because the county does not possess or maintain the requested records at issue. The Act is applicable to “public information.” *See* Gov’t Code § 552.021. Section 552.002(a) defines “public information” as the following:

[I]nformation 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(a). Thus, virtually all information in a governmental body’s physical possession constitutes public information subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information a governmental body does not physically possess. Information that is written, produced, collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns, has a right of access, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov’t Code § 552.002(a); *see* Open Records Decision No. 462 at 4 (1987); *cf.* Open Records Decision No. 499 (1988). Additionally, information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body. *See* Gov’t Code § 552.002(a-1).

You state you do not maintain the requested time and expense records. You further state the information at issue is maintained by the special counsel. However, we understand the county has contracted with the special counsel for the opioid litigation at issue. We also note although the special counsel states it represents dozens of clients in this litigation, it explains the submitted information is specific to the county as a client. Thus, we find public money was spent for the purpose of writing, producing, collecting, assembling, or

maintaining the information at issue. *See id.* § 552.002(a)(2)(C). Furthermore, the information pertains to the transaction of official business of the county. Accordingly, the information at issue constitutes “public information” as defined by section 552.002(a) and is subject to the Act.

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.

*Id.* § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception 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. *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).

You state, and submit documentation demonstrating, a lawsuit styled *County of Bexar vs. Purdue Pharma, L.P.*, Cause 2017-77066, was pending in the 152nd Judicial District Court of Harris County, Texas, when the county received the instant request for information. You further state the submitted information is related to the pending litigation because it pertains the county’s legal representation and legal strategy for the lawsuit. Upon review of your arguments and the information at issue, we find submitted information relates to litigation to which the county was a party that was pending when the county received this request for information. Accordingly, the county may withhold the submitted information under section 552.103 of the Government Code.<sup>2</sup>

---

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

We note 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. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the 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).

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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/rm

Ref: ID# 795555

Enc. Submitted documents

c: Requestor  
(w/o enclosures)