



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 4, 2019

Mr. Juan A. Roque
Assistant District Attorney
Civil Division
Bexar County
101 West Nueva Street
San Antonio, Texas 78205

OR2019-34097

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# 800247 (File No. 7909 (Nos. R001939, R001940, R001941, and R001942)).

Bexar County (the "county") received four requests from the same requestor for information pertaining to the Bexar County Constable's Office. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the representative sample of information.¹

Initially, we note some of the submitted 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.

¹ We 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 those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.022(a)(3). The submitted information includes an invoice subject to section 552.022(a)(3). Thus, the information at issue must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold the information at issue under section 552.103 of the Government Code. However, section 552.103 is a discretionary exception and does not make information confidential under the Act. *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). Therefore, the information at issue may not be withheld under section 552.103 of the Government Code. As you raise no further exceptions to disclosure for this information, the county must release the information we have marked.

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

(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). The governmental body claiming section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of 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 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

You state, and provide documentation showing before the county's receipt of the requests for information, the requestor filed two lawsuits styled *Moreno v. Constable Michelle Barrientes, Bexar County, Texas*, Cause No. 5:19-cv-00870-FB, which is currently pending in the Western District of Texas, and *Cerda v. Bexar County*, Cause No. 2019CI18314, which is currently pending in the 73rd Judicial District of Bexar County. Therefore, we agree litigation involving the county was pending on the date the county received the

present requests for information. You also state the information at issue is related to the pending lawsuits. Based upon these representations and our review, we find the remaining information is related to the pending litigation. Accordingly, the county may withhold the remaining information under section 552.103 of the Government Code.

In summary, the county must release the information we marked pursuant to section 552.022(a)(3) of the Government Code. The county may withhold the remaining 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,



Lindsay Hale
Assistant Attorney General
Open Records Division

LEH/eb

Ref: ID# 800247

Enc. Submitted documents

c: Requestor
(w/o enclosures)