



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 14, 2020

Mr. Tony Paul
Assistant District Attorney
Denton County Criminal District Attorney's Office
P.O. Box 2344
Denton, Texas 76202

OR2020-01316

Dear Mr. Paul:

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# 806057 (PIR No. 20-014).

The Denton County Criminal District Attorney's Office (the "district attorney's office") received a request for all communications between employees of the district attorney's office and a named individual during a stated period of time. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note some of the submitted information is not responsive to the present request because it does not consist of communications between employees of the district attorney's office and the individual named in the request. This ruling does not address the public availability of any information that is not responsive to the request and the district attorney's office is not required to release such information in response to the present request.²

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

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.

² As we are able to make this determination, we need not address your arguments against disclosure of this information.

(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 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. *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). The governmental body must meet both parts of this test for information to be excepted from disclosure under section 552.103(a). *See* ORD 551 at 4.

You state, and provide documentation demonstrating, a criminal case against the requestor styled *State of Texas v. Vandyke*, Cause No. CR-2018-07544-E, was pending in the Denton County Criminal Court No. 5 when the district attorney's office received the present request for information. Further, you state the information at issue relates to the pending case. Based on your representations, the submitted documentation, and our review, we find litigation was pending when the district attorney's office received the present request for information and the information at issue is related to the pending litigation for the purposes of section 552.103. Accordingly, the district attorney's office may withhold the responsive information under section 552.103 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. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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,



Blake Brennan
Assistant Attorney General
Open Records Division

BBX/rm

Ref: ID# 806057

Enc. Submitted documents

c: Requestor
(w/o enclosures)