



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 7, 2020

Mr. Ronny H. Wall  
Senior Associate General Counsel  
Texas Tech University System  
P.O. Box 45031  
Lubbock, Texas 79409-5031

OR2020-10402

Dear Mr. Wall:

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# 820852.

The Texas Tech University (the "university") received a request for specified documents referenced in a specified Motion for Summary Judgement. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, 552.111, 552.1325, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us there was an unauthorized release of the submitted information. Section 552.007 of the Government Code provides that if a governmental body voluntarily released information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989). However, we note a governmental body is not precluded from invoking an exception to further public disclosure of information that has been released through no official action and against the wishes and policy of the governmental body. *See* Open Records Decision No. 376 at 2 (1983); *see also* Open Records Decision No. 387 at (3) (1983) (information that is not voluntarily released by a governmental body, but nevertheless comes into another party's possession, is not henceforth automatically available to everyone). You state the release of the information at issue was unauthorized and against the wishes of the university. Because you state you did not voluntarily release the information at issue, we conclude the university did not waive its claim under section 552.107 of the Government Code.

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 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 is 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 prongs of this test for information to be excepted from disclosure under section 552.103(a).

You inform us, and provide documentation showing, prior to the receipt of the instant requests, a lawsuit was filed against the university styled *Dolcefino Communications, LLC v. Texas Tech University*, Cause No. 2018528740, on January 8, 2018, in the 99th Judicial District Court for Lubbock County, Texas. Based upon your representation and our review, we find litigation was pending at the time the university received the present request. Further, we agree the information at issue relates to the pending litigation for the purposes of section 552.103. Therefore, we conclude the university may withhold the submitted information under section 552.103 of the Government Code.<sup>1</sup>

Generally, however, once information has been obtained by all parties to the litigation though 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).

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

Finally, the university asks this office to issue a previous determination permitting it to withhold the information at issue under section 552.103 of the Government Code for subsequent requests for the same information as long as the law, facts, and circumstances have not changed without seeking a ruling from this office. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); ORD 673 (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/rm

Ref: ID# 820582

Enc. Submitted documents

c: Requestor  
(w/o enclosures)