



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2020

Ms. LaNetra S. Lary
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2020-10755

Dear Ms. Lary:

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# 819405.

The Fort Bend County Attorney's Office (the "county") received two requests from the same requestor for billing information pertaining to specified litigation.¹ You state the county has released some information. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Rusty Hardin and Associates, LLP ("RHA") and Tate, Moerer, and King, LLP ("TMK"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their 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 RHA. We have considered the submitted arguments and reviewed the submitted information.

¹ 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, you state the requestor has clarified that invoices and related information are not responsive to the second request for information. This ruling does not address the public availability of non-responsive information, and the county need not release non-responsive information to the requestor.

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 the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (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).

The county and RHA inform us RHA and TMK represent the Fort Bend County Juvenile Justice Department (the "department"), a state agency not under the control or direction of the county. The county and RHA contend the information at issue is related to pending litigation in which the county and the department are co-defendants. The county and RHA inform us, and have provided documentation demonstrating, litigation styled *Roach v. Ingram*, Cause No. 15-DCV-223241, was pending in the 268th Judicial District of the District Court of Fort Bend County on the date the county received the request. The county and RHA further explain the information at issue is related to the pending lawsuit because it pertains to evidence submitted in the case to support the imposition of sanctions and fees. Based on these representations, the submitted documentation, and our review of the submitted responsive information, we find litigation was pending when the county received this request for information, and we find the information at issue is related to the pending litigation for purposes of section 552.103. Therefore, the county may withhold the

submitted responsive information under section 552.103 of the Government Code.²

We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. Thus, if the opposing party has seen or had access to information relating to the pending litigation through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103 ends once the litigation concludes. *See* 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/jxd

Ref: ID# 819405

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted responsive information.