



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 14, 2020

Ms. Tiffany Bangs  
Assistant County Attorney  
Harris County  
1019 Congress, 15th Floor  
Houston, Texas 77002

OR2020-17430

Dear Ms. Bangs:

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# 835656 (Ref. No. 20PIA0279).

The Harris County Commissioner Precinct 3 (the "county") received a request for five categories of information pertaining to a specified agreement with a named company. 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 submitted information.

Initially, we note some of the submitted information may be subject to section 552.022(a) of the Government Code, which provides, in part, the following:

Without limiting the amount or kind of information that is public information under this chapter, the 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;

...

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(3), (15). Some of the submitted information consists of information in an account, contract, or voucher relating to the receipt or expenditure of funds by the county that is subject to section 552.022(a)(3) and, therefore, must be released unless it is made confidential under the Act or other law. Further, the submitted information includes an order from the Commissioners Court of Harris County (the "commissioners court"), which may be subject to section 552.022(a)(15) if the county considers such information to be open to the public under its policies. If the county regards the submitted commissioners court order as open to the public, then this information is subject to section 552.022(a)(15) and, in that instance, it may only be withheld to the extent it is confidential under the Act or other law. *See id.* The county seeks to withhold the information at issue under section 552.103 of the Government Code. However, this section is discretionary in nature 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 Gov't Code § 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 county may not withhold the information we indicated subject to section 552.022(a)(3) or, if the county considers such information to be open to the public under its policies, the commissioners court order we indicated pursuant to section 552.022(a)(15) of the Government Code. As no other exceptions to disclosure have been raised for this information, we find the information subject to section 552.022 must be released. However, we will consider the county's arguments under section 552.103 for the remaining information not subject to section 552.022 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 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, prior to the county's receipt of the instant request, a lawsuit styled *Harris County v. CB Bear Creek Golf*, Case No. 1149415, was filed and is currently pending in Harris County Civil Court at Law No. 4. You also state the information at issue pertains to the substance of the lawsuit claims. Based on your representations and our review, we find the information at issue is related to litigation that was pending on the date the county received the present request for information. Therefore, we conclude the county may withhold the remaining information at issue under section 552.103 of the Government Code.

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).

In summary, the county must release the information we indicated pursuant to section 552.022(a)(3) of the Government Code. The county must release the commissioners court order we indicated pursuant to section 552.022(a)(15) if the county considers such information to be open to the public under its policies. 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,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MG/be

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)