



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2020

Ms. Tiffany Bangs
Assistant General Counsel
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002

OR2020-18885

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# 838230 (C.A. File No. 20PIA0317).

The Harris County Attorney's Office (the "county attorney's office") received a request for a specified bid bond rescinded by the Harris County Commissioners Court. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the requestor's claim the county attorney's office failed to comply with the procedural obligations under section 552.301 of the Government Code in requesting a ruling from this office. *See id.* § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). We note this office does not count the date the request was received or holidays, including skeleton crew days observed by a governmental body, for purposes of calculating a governmental body's deadlines under the Act. Upon review, we find the county attorney's office complied with the requirements of section 552.301 in requesting this decision from

¹ We note that although you raise section 552.108 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim section 552.108 applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

our office. *See id.* § 552.233 (temporary suspension of requirements for governmental body impacted by catastrophe). Thus, we will consider the argument of the county attorney's office against disclosure of the submitted information.

Next, 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:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information includes court-filed documents that are subject to section 552.022(a)(17) of the Government Code. The county attorney's office must release this information pursuant to section 552.022(a)(17), unless it is made confidential under the Act or other law. *See id.* You seek to withhold this information under section 552.103 of the Government Code. However, this section 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 county attorney's office may not withhold the information at issue, which we marked, under section 552.103. Accordingly, the county attorney's office must release the court-filed documents we marked pursuant to section 552.022(a)(17) of the Government Code. However, we will address your assertion of section 552.103 for the remaining information, which is not subject to section 552.022(a)(17).

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).

You state, and provide documentation showing, a lawsuit styled *Harris County and Harris County Flood Control District v. Env'tl. Indus. Services Grp., Inc., Hanover Ins. Co., Inc., and Allmerica Fin. Alliance Ins. Co.*, Cause No. 2018-40034, was pending against Harris County in the 157th Judicial District Court of Harris County, Texas, when it received the instant request for information. You state the remaining information is related to the pending lawsuit because it pertains to the underlying issues in the suit. Based on your representations, the submitted documentation, and our review of the submitted information, we find litigation was pending when the county attorney's office received this request for information, and the remaining information is related to the pending litigation for the purposes of section 552.103. Therefore, the county attorney's office may withhold the remaining information under section 552.103(a) of the Government Code.

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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the county attorney's office must release the court-filed documents we marked pursuant to section 552.022(a)(17) of the Government Code. The county attorney's office may withhold the remaining information under section 552.103(a) 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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/jxd

Ref: ID# 838230

Enc. Submitted documents

c: Requestor
(w/o enclosures)