



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 19, 2020

Ms. Dylbia L. Jefferies Vega
Attorney
Cameron County
1100 East Monroe Street
Brownsville, Texas 78520

OR2020-20895

Dear Ms. Vega:

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# 840873.

The Cameron County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident, including letters of termination or suspension for the employees involved in the incident at issue. 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 portions of the submitted information, which we have marked, are not responsive to the instant request because they do not pertain to the incident at issue or the requested letters of termination or suspension. The sheriff's office need not release non-responsive information in response to this request, and this ruling will not address that information.

Next, we note some of the responsive 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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The responsive information contains a completed investigation that is subject to section 552.022(a)(1). The sheriff's office must release the information at issue pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. Although you raise section 552.103 of the Government Code for the information at issue, this section is a discretionary exception to disclosure 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); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, none of the information subject to section 552.022(a)(1) may be withheld under section 552.103. As you raise no further exceptions to disclosure of this information, the sheriff's office must release the information we marked pursuant to section 552.022(a)(1) of the Government Code. However, we will consider your argument under section 552.103 for the information not subject to section 552.022 of the Government Code.

Section 552.103 of the Government Code provides in relevant part 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). The 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 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).

For purposes of section 552.103, “litigation” includes contested cases conducted in a quasi-judicial forum. Open Records Decision Nos. 588 at 2 (1991), 474 at 6 (1987), 368 at 2 (1983), 301 at 1-2 (1982). Factors this office considers in determining whether an administrative proceeding is conducted in a quasi-judicial forum include whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See* ORD 588 at 3-4.

You have provided supporting documentation showing the Cameron County Civil Service Commission (the “commission”) provides a forum for employees to contest personnel actions taken against them, and, upon a final determination by the commission, an employee may appeal by filing a petition in a Cameron County district court pursuant to chapter 158 of the Local Government Code. *See* Local Gov’t Code §§ 158.032 (providing a sheriff’s department in a county with a population of more than 500,000 may, in accordance with subchapter, create a civil service system), .035(a)(6) (providing for the adoption, publication and enforcement of rules regarding grievance procedures). The supporting documentation also shows the commission appeal hearings include a pre-hearing conference and a formal exchange between both parties of copies of exhibits to be used during the hearing and a list of all witnesses each party intends to call. We note chapter 158 provides that during a commission hearing, the appellant may be represented by counsel, witnesses may be called to testify, and a record or transcript of the proceedings may be created. Based on these representations and our review, we find the sheriff’s office has demonstrated the commission’s appeal process is conducted in a quasi-judicial forum and, thus, constitutes litigation for purposes of section 552.103 of the Government Code.

You state, and provide documentation showing, a sheriff’s office employee has appealed disciplinary action taken against him, and a hearing has been set before the commission. You further state, and the documentation shows, the notice of appeal was filed prior to the sheriff’s office’s receipt of the instant request for information. Accordingly, we find the sheriff’s office was involved in litigation on the date it received the request for information. Further, you argue the remaining information relates to the issue in the pending hearing. Upon review of your arguments and the information at issue, we find the remaining is related to litigation involving the sheriff’s office that was pending on the date the request was received. Accordingly, we find the sheriff’s office may withhold the remaining information under section 552.103 of the Government Code.

We note 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 the opposing party in the 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 must release the information we marked pursuant to section 552.022(a)(1) of the Government Code. The county may withhold the remaining responsive 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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/mo

Ref: ID# 840873

Enc. Submitted documents

c: Requestor
(w/o enclosures)