



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 24, 2020

Mr. Justin Bradford Smith
Assistant District Attorney
Bell County
P.O. Box 540
Belton, Texas 76513-0540

OR2020-21166

Dear Mr. Smith:

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# 841503.

The 27th Judicial District Attorney's Office (the "district attorney's office") received a request for the personnel files of three named employees. You state the district attorney's office has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.140 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.140 of the Government Code provides a military veteran's DD-214 form or other military discharge record that is first recorded with, or that otherwise first comes into the possession of, a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See* Gov't Code § 552.140(a)-(b). The district attorney's office came into possession of the submitted military discharge record after September 1, 2003. Accordingly, we conclude the district attorney's office must withhold the military discharge record you indicated under section 552.140 of the Government Code.¹

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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.

Id. § 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 the remaining information pertains to a pending criminal prosecution in the 27th District Court of Bell County, Texas involving the district attorney's office. Based upon your representations and our review, we find the district attorney's office was a party to pending criminal litigation on the date it received the present request. We also find the information at issue is related to the pending litigation. Accordingly, the district attorney's office may withhold the remaining information under section 552.103(a) of the Government Code.

In summary, the district attorney's office must withhold the military discharge record you indicated under section 552.140 of the Government Code. The district 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,

Sean McCormick
Assistant Attorney General
Open Records Division

SMC/jxd

Ref: ID# 841503

Enc. Submitted documents

c: Requestor
(w/o enclosures)