



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 24, 2020

Mr. Kieran Hillis  
Public Information Coordinator & Assistant General Counsel  
The Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

OR2020-24110

Dear Mr. Hillis:

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# 845605 (OOG ID#s: 402-20, 403-20, 404-20, 405-20, and 406-20).

The Office of the Governor (the "governor's office") received ten requests from the same requestor for information used or considered by the governor's office in formulating particular guidelines. You state the governor's office will redact personal e-mail addresses pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. You also state you notified third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code §§ 552.304 (interested party may submit comments stating why information should or should not be released), .305; *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 considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup> Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

<sup>2</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 governor's office states several lawsuits were pending against the governor's office when it received the instant requests for information.<sup>3</sup> You state the submitted information is related to the pending lawsuits because it pertains to the claims in the lawsuits. Based on your representations, the submitted documentation, and our review of the submitted information, we find litigation was pending when the governor's office received this request for information, and the submitted information is related to the pending litigation for the purposes of section 552.103. Therefore, the governor's office may withhold the submitted information under section 552.103(a) of the Government Code.<sup>4</sup>

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<sup>3</sup> You state the pending lawsuits were *Hotze v. Abbott*, Case No. D-1-GN-20-002146 in the 98th Judicial District Court of Travis County, Texas; *Galovelho, LLC v. Abbott*, Case No. 219-02595-2020, in the 219th Judicial District Court of Collin County, Texas; *Hotze v. Abbott*, Case No. 20-06-07436 in the United States District Court for the Southern District of Texas; *Tune Up Salon Holdco, LLC v. Montgomery County*, Case No. 20-06-07436 in the 284<sup>th</sup> Judicial District of Montgomery County, Texas; *Parker, v. Abbott*, Case No. D-1-GN-20-003413 in the 200<sup>th</sup> Judicial District Court of Travis County, Texas; *6th Street Business Partners LLC v. Abbott*, Case No. 1:20-cv-00706 in the United States District Court for the Western Division of Texas, Austin Division; and *Hotze v. Abbott*, Case No. D-1-GN-20-003509 in the 53rd Judicial District Court of Travis County, Texas.

<sup>4</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

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).

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,

Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/rm

Ref: ID# 845605

Enc. Submitted documents

c: Requestor  
(w/o enclosures)