



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 25, 2020

Ms. Elizabeth Lutton
Legal Advisor
Dallas County Sheriff's Office
133 North Riverfront Boulevard, LB #31
Dallas, Texas 75207-4313

OR2020-24263

Dear Ms. Lutton:

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# 845900.

The Dallas County Sheriff's Office (the "sheriff's office") received a request for certain records submitted by twelve named individuals during a defined period of time and certain documents pertaining to the response of the sheriff's office to grievances and complaints during a defined period of time. 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 you have only submitted information related to eleven of the named individuals. To the extent any responsive information pertaining to the remaining named individual existed on the date the sheriff's office received the request, we assume the sheriff's office has released it. If the sheriff's office has not released any such information, it must do so at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).*

Next, we note some of the submitted information, which we marked, is not responsive to the instant request for information because it is outside the requested time period. This ruling does not address the public availability of any information that is not responsive to

the request and the sheriff's office is not required to release such information in response to this request.¹

Section 552.103 of the Government Code provides, in 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 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 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). See ORD 551.

The sheriff's office states, and submits documentation showing, litigation styled *Sanchez v. Dallas County*, Civil Action No. 3:20-cv-00832, was pending against a sheriff's office official, in official capacity, when the sheriff's office received the instant request for information. Therefore, we agree litigation was pending when the sheriff's office received the request. We also find the sheriff's office has established some of the responsive information is related to the pending litigation for purposes of section 552.103(a). Therefore, the sheriff's office may withhold the responsive information we marked under section 552.103(a) of the Government Code. However, we find the sheriff's office has failed to demonstrate the remaining responsive information is related to the pending litigation. Accordingly, the sheriff's office may not withhold the remaining responsive information under section 552.103 of the Government Code. As no further exceptions to disclosure have been raised, the sheriff's office must release the remaining responsive information.

¹ As we are able to make this determination, we need not address the submitted argument against disclosure of this 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. *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).

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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/eb

Ref: ID# 845900

Enc. Submitted documents

c: Requestor
(w/o enclosures)