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ATTORNEY GENERAL OF TEXAS

October 9, 2020

Ms. Mia Settle Vinson
Open Records Attorney
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

OR2020-25466

Dear Ms. Vinson:

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# 847312 (ORR# 202003386).

The Texas Department of Licensing and Regulation (the "department") received a request for information pertaining to a named individual.¹ The department states it has released some of the requested information, but claims the submitted information is either not subject to the Act or excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

The Act generally requires the disclosure of information maintained by a "governmental body." *See* Gov't Code § 552.021. However, the Act's definition of "governmental body" does not include the judiciary." *See id.* § 552.003(1)(A), (B). Information "collected, assembled, or maintained by or for the judiciary" is not subject to the Act but, instead, is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Government Code section 552.003(1)(B) prior to enactment of Government Code section 552.0035). Therefore, the Act "neither authorizes

¹The department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

information held by the judiciary to be withheld nor requires it be disclosed.” Open Records Decision No. 25 at 2 (1974). Upon review, we find the department has failed to establish any of the submitted information consists of records of the judiciary. Therefore, we conclude the submitted information is subject to the Act in its entirety, and we will address the arguments of the department to withhold the information on that ground.

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). We note contested cases conducted under the Texas Administrative Procedure Act (the “APA”), chapter 2001 of the Government Code, are considered litigation for purposes of section 552.103 of the Government Code. *See* Open Records Decision No. 588 at 7 (1991).

The department states, prior to the receipt of the request for information, it opened an enforcement case relating to alleged violations of statutory and administrative rule violations by a tow truck operator. The department explains the submitted information pertains to a pending contested case before the State Office of Administrative Hearings (“SOAH”) under the APA. Based on the department’s representations and our review, we find litigation was pending when the department received this request for information, and the submitted information is related to the pending litigation for the purposes of section

552.103. Therefore, section 552.103 of the Government Code is applicable to the submitted information.²

However, once information has been obtained by all parties to the anticipated 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 pending litigation is not excepted from disclosure under section 552.103(a). We note the opposing party to the pending litigation at issue has seen or had access to some of the submitted information. Therefore, the department may not withhold this information pursuant to section 552.103. Accordingly, the department must release to the requestor the submitted information that has either been obtained from or provided to the opposing party in the pending litigation. However, we agree the department may withhold the remaining information under section 552.103 of the Government Code. We note 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 847312

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As our ruling is dispositive, we do not address the other arguments of the department to withhold this information.