



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 16, 2020

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

OR2020-26151

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# 849215 (OOG ID# 463-20).

The Office of the Governor (the "governor's office") received a request for the information responsive to twelve prior public information requests made to the governor's office.<sup>1</sup> You state the governor's office has released some information to the requestor. You also state the governor's office does not possess some of the requested information.<sup>2</sup> You claim some of the requested information is subject to previous rulings by our office. You also claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.<sup>3</sup>

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<sup>1</sup> You state the governor's office sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing 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) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup> The Act does not require a governmental body to create or release information that did not exist when a request for information was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>3</sup> We assume 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 those records contain substantially different types of information than that submitted to this office.

Initially, you inform us some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2020-19714 (2020), 2020-19841 (2020), 2020-21816 (2020), 2020-21831 (2020), and 2020-25363 (2020). You state the law, facts, or circumstances on which these prior rulings were based have not changed. Accordingly, the governor's office must continue to rely on Open Records Letter Nos. 2020-19714, 2020-19841, 2020-21816, 2020-21831, and 2020-25363 as previous determinations and withhold or release the information previously ruled upon in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). You also state the facts or circumstances have changed for a portion of the remaining requested information, as a result of which this office issued Open Records Letter Nos. 2020-24096 (2020), 2020-24097 (2020), and 2020-24109 (2020). However, you also state the law, facts, or circumstances have not changed for the remaining information at issue in Open Records Letter Nos. 2020-24096, 2020-24097, and 2020-24109. Thus, the governor's office must continue to rely on Open Records Letter Nos. 2020-24096, 2020-24097, and 2020-24109 for the remaining requested information for which facts or circumstances have not changed and withhold or release the identical information in accordance with those rulings. *See id.* However, we will address the submitted argument against disclosure of the submitted information, for which facts or circumstances have changed.

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 that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (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 that prior to the receipt of the instant request by the governor's office, a lawsuit against the governor's office styled *Hall v. Abbott*, Cause No. D-1-GN-20-003980, was filed and currently pending in the 261st Judicial District of Travis County, Texas. You further state the submitted information is related to the pending litigation because it pertains to the claims in the lawsuit. Upon review of your arguments and the information at issue, we find the submitted information relates to litigation that was pending when the governor's office received this request for information. Accordingly, the governor's office may withhold the submitted information under section 552.103 of the Government Code.

In summary, the governor's office must continue to rely on Open Records Letter Nos. 2020-19714, 2020-19841, 2020-21816, 2020-21831, and 2020-25363 as previous determinations and withhold or release the information previously ruled upon in accordance with those rulings. The governor's office must continue to rely on Open Records Letter Nos. 2020-24096, 2020-24097, and 2020-24109 for the remaining requested information for which facts or circumstances have not changed and withhold or release the identical information in accordance with those rulings. The governor's office may withhold the submitted 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,

Deborah Southerland  
Assistant Attorney General  
Open Records Division

DS/rm

Ref: ID# 849215

Enc. Submitted documents

c: Requestor  
(w/o enclosures)