



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 3, 2020

Ms. Deanne Lin  
Assistant County Attorney  
Harris County Attorney's Office  
1019 Congress, 15th Floor  
Houston, Texas 77002

OR2020-27611

Dear Ms. Lin:

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# 852171 (Ref. No. 20PIA0595).

The Office of the Harris County Constable, Precinct 1 (the "constable's office") received a request for all disciplinary records pertaining to two named officers. You claim the submitted information should not be released under the Act. You also claim the submitted information is excepted from disclosure under section 552.103 of the Government Code.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

You assert the present request attempts to circumvent the discovery process. You argue legal authority already exists which governs the production of documents in litigation. Section 552.0055 of the Government Code provides "[a] subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under this chapter." Gov't Code § 552.0055. This section does not apply in all instances in which a governmental body could have received such a subpoena or discovery request. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999) (in interpreting statutes, goal of discerning legislature's intent is served by beginning with statute's plain language because it is assumed that legislature tried to say what it meant and its words are therefore surest guide to its intent); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex.1994))

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<sup>1</sup> We understand you to raise section 552.103 of the Government Code based on your arguments. Additionally, you raise section 552.022 of the Government Code; however, that provision is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under the Act or other law. *See* Gov't Code § 552.022.

(“In applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of the statute as it is written.”).

You do not assert the instant request is in fact a “subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure.” Furthermore, you have not demonstrated, and the request does not indicate, the information was otherwise requested pursuant to the authority of a statute or a rule of civil or criminal procedure. The requestor states he is requesting the information under the “Texas Public Information Act.” Therefore, we find the constable’s office received a request for information under the Act, and we will consider whether the constable’s office is required to release the submitted information pursuant to chapter 552 of the Government Code.

Next, we note some of the submitted information consists of information subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]” unless it is excepted by section 552.108 of the Government Code or “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a)(1). Although you assert the information at issue is excepted from disclosure under section 552.103 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the constable’s office may not withhold the information subject to section 552.022 under section 552.103. However, we note sections 552.101, 552.117 and 552.130 of the Government Code can make information confidential under the Act or other law.<sup>2</sup> Therefore, we will consider the applicability of these sections to the submitted information. In addition, we will address your argument under section 552.103 for the information not subject to section 552.022.

Section 552.103 of the Government Code provides, in relevant 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 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

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<sup>2</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). The governmental body claiming section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information, and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

Although you claim section 552.103 for the information not subject to section 552.022 because litigation is pending, you have not demonstrated the constable's office was a party to any litigation which was pending on the date the request was received. Thus, we find you have failed to demonstrate the applicability of section 552.103 to the information at issue. *See Gov't Code §§ 552.103(c) (governmental body must demonstrate that litigation was pending on or before the date it received request for information), .301 (e)(1) (requiring governmental body to explain applicability of raised exception).* Accordingly, the constable's office may not withhold any portion of the information not subject to section 552.022 under section 552.103 of the Government Code.

After reviewing the submitted information, we have determined no novel or complex issue exists in the information at issue. Thus, we address applicable exceptions in a summary ruling.

The constable's office must withhold the CR-3 accident report we marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The constable's office must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The constable's office must withhold the information we marked under section 552.117(a)(2) of the Government Code. The constable's office must withhold the motor vehicle record information we marked in the submitted documents and all visible license plates and vehicle identification numbers in the submitted photographs under section 552.130 of the Government Code. The constable's office must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MRG/be

Ref: ID# 852171

Enc. Submitted documents

c: Requestor  
(w/o enclosures)