



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 16, 2020

Mr. Robert J. Davis  
Attorney for the Collin County Sheriff's Office  
Matthews, Shiels, Knott, Eden, Davis & Beanland, LLP  
8131 Lyndon B. Johnson Freeway, Suite 700  
Dallas, Texas 75251

OR2020-28661

Dear Mr. Davis:

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# 854278 (1600/67889).

Collin County (the "county"), which you represent, received a request for the following information: (1) oaths of office, statements of officer, and public official bonds for the current term and previous term of two county officials; (2) specified W-9 tax forms and information pertaining to whether the county Clerk's Office and Tax Assessor-Collector's Office are exempt from federal income taxes; (3) five categories of information pertaining to a specified financial instrument; (4) a list of beneficiaries of a specified fund; (5) a list of all county employees who currently have a Securities and Exchange Commission securities license; and (6) the name and contact information for an employee employed in a specified job position. You claim the requested 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note you have not submitted any information responsive to items 2, 3, 4, 5, or 6 of the request for information, as listed above. Thus, although you state the county has submitted a representative sample of the requested information, we find the submitted information is not representative of all the information to which the requestor seeks access. Please be advised this open records letter ruling applies only to the type of information you have submitted for our review. This ruling does not authorize the district to withhold any type of information that is substantially different from the types of information you

submitted to this office. *See id.* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). Therefore, we presume the county has released the information responsive to the remaining portions of the request, to the extent such information existed when the county received this request for information. If not, then the county must release any such information immediately. *See id.* §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

Next, we address the requestor's assertion the county failed to comply with section 552.301 of the Government Code in requesting a ruling from this office. Pursuant to section 552.301(b), a governmental body must ask for a decision and state the exceptions that apply within ten business days of receiving the written request. *See Gov't Code* § 552.301(b). The county states it received the request for information on August 27, 2020. However, the requestor alleges the county received the request for information on August 26, 2020. We understand the county was closed on September 7, 2020. This office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Therefore, if the county received the request on August 26, 2020, its ten-business-day deadline was September 10, 2020. If the county received the request on August 27, 2020, its ten-business-day deadline was September 11, 2020. The envelope in which the county provided the information required by section 552.301(b) was postmarked September 10, 2020. Thus, we need not determine on which date the county received the request, as the county timely submitted its correspondence to this office in either case. The requestor also contends he has "yet to receive an answer from the [county] Public Information Officer regarding [his request.]" However, we note the requestor states he received the county's request for a ruling from the attorney representing the county, as required by section 552.301(d). Accordingly, we find the county complied with the procedural requirements mandated by section 552.301 of the Government Code. Therefore, we will address the county's argument against disclosure of the submitted information.

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, and submit documentation demonstrating, the county was a party to pending litigation styled *Matthew Santoro v. Collin County, et. al*, Case No. 20-40075, in the United States District Court of Appeals for the Fifth Circuit. You also inform us, and submit documentation demonstrating, the county's motion for dismissal was granted and the claims against it were dismissed on June 2, 2020. However, you also state the deadline for filing an appeal had not passed as of the date the county received the request. Although the requestor contends the claims against the county were dismissed on April 2, 2020, we note the dismissal the requestor has submitted pertains to his claims against other defendants. The requestor also contends that because he was "unable to perfect [his] appeal to the Fifth Circuit, appealing to the Supreme Court was not a violable option for [him]." Whether the requestor may file an appeal is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. *See* Open Records Decision No. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). We must rely on facts alleged to us by the governmental body requesting our opinion or upon those facts that are discernable from the documents submitted for our inspection. *See* ORD 552 at 4. Based on the county's representations, the submitted documentation, and our review, we find the county was a party to pending litigation at the time it received the instant request. You also state the information at issue pertains to the substance of the lawsuit claims. Based on your representations and our review, we find the information at issue is related to the pending litigation. Therefore, we conclude the county may withhold the submitted information under section 552.103 of the Government Code.

We note 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 the opposing party in the 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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/be

Ref: ID# 854278

Enc. Submitted documents

c: Requestor  
(w/o enclosures)