



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 18, 2022

Mr. Robert J. Davis
Counsel for Collin County
Matthews, Shiels, Knott, Eden, Davis & Beanland, L.L.P.
8131 LBJ Freeway, Suite 700
Dallas, Texas 75251

OR2022-07939

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# 936825 (File No. 1600/71038).

The Collin County Sheriff's Office (the "sheriff's office"), which you represent, received a request for certain information within the requestor's personnel file during a defined time period.¹ 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, the submitted information includes an officer's Texas Commission on Law Enforcement ("TCOLE") identification number. Section 552.002(a) of the Government Code defines "public information" as the following:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

¹ The sheriff's office provides documentation showing it 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).

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Thus, we find the officer's TCOLE number does not constitute public information under section 552.002 of the Government Code. Therefore, the officer's TCOLE number is not subject to the Act and need not be released.

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 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.

Id. § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show section 552.103(a) 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). The governmental body must meet both parts of this test for information to be excepted from disclosure under section 552.103(a). See ORD 551 at 4. We note contested cases conducted under the Administrative Procedure Act (the “APA”), chapter 2001 of the Government Code, are considered litigation for the purposes of section 552.103. See Open Records Decision No. 588 at 7 (1991). We further note a contested case before the State Office of Administrative Hearings (“SOAH”) is considered litigation for the purposes of the APA. See *id.*

You state, and provide documentation demonstrating, prior to receipt of the present request, the requestor filed a petition with TCOLE challenging the status of his discharge from the sheriff’s office. You explain this matter was referred to SOAH for a contested case hearing challenging the requestor’s F-5 Report of Separation in accordance with section 1701.4525 of the Occupations Code. See Occ. Code § 1701.4525 (establishing process for officer to contest information in employment termination report). Section 1701.4525(d) states “[a] proceeding to contest information in an employment termination report is a contested case under Chapter 2001, Government Code.” *Id.* § 1701.4525(d). Thus, we agree litigation was pending when the sheriff’s office received the request. You state the information at issue relates to the pending proceeding because it relates to the incident that was the basis for the requestor’s separation from the sheriff’s office. Upon review, we agree the information at issue is related to the pending proceeding for purposes of section 552.103 of the Government Code. Based on your representations and our review, we conclude the sheriff’s office may withhold the remaining information under section 552.103 of the Government Code.

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).

In summary, the officer’s TCOLE number is not subject to the Act and need not be released. The sheriff’s office may withhold the remaining 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.

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,

Pearlie Gault
Attorney
Open Records Division

PG/jxd

Ref: ID# 936825

Enc. Submitted documents

c: Requestor
(w/o enclosures)