



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 24, 2022

Mr. Ronny H. Wall
Senior Associate General Counsel
Texas Tech University System
P.O. Box 42021
Lubbock, Texas 79409-2021

OR2022-08545

Dear Mr. Wall:

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# 935181.

Texas Tech University System (the "system") received two requests from the same requestor for the following: (1) e-mails between the Texas Tech Police Department and a specified entity during a specified time period and pertaining to a specified topic and (2) e-mails pertaining to the production of a specified cost estimate.¹ You state the system will redact personal e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).² You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹ You inform us the system sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the system received the required deposit on January 3, 2022. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

² Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

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).

The system states, and provides documentation showing, the following lawsuits were pending against the system when the system received the instant requests for information: (1) *Dolcefino Consulting v. Texas Tech University*, Cause No. 2018-528740, pending in the 99th Judicial District Court of Lubbock County, Texas and (2) *Dolcefino Consulting v. Texas Tech University*, Cause No. DC-2021-CV-0676 pending in the 72nd Judicial District Court of Lubbock County, Texas. The system states the submitted information is related to the pending lawsuits. Based on these representations, the submitted documentation, and our review of the information at issue, we find litigation was pending when the system received the requests for information and the information at issue is related to the pending litigation for the purposes of section 552.103. Therefore, the system may generally withhold the submitted information under section 552.103(a) of the Government Code.³

However, we note some of the information at issue was received from the opposing party in the litigation, and, thus, the opposing party has seen or had access to that information. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, if the opposing party has seen or had access to

³ As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

information relating to litigation, through discovery or otherwise, then there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, the e-mail and attachment received from the opposing party are not protected by section 552.103 and may not be withheld on that basis. We also note the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). With the exception of the e-mail and attachment received from the opposing party to the litigation, which must be released, the system 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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/jxd

Ref: ID# 935181

c: Requestor