



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 3, 2022

Ms. Letetia Patin
Dallas Housing Authority
3939 North Hampton Road
Dallas, Texas 75212

OR2022-15929

Dear Ms. Patin:

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# 949510.

The Dallas Housing Authority (the "authority") received a request for information pertaining to the requestor's clients. 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, we note a portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information includes a contract relating to the receipt or expenditure of public or other funds by the authority subject to section 552.022(a)(3). The authority must release this information pursuant to section 552.022(a)(3) unless it is expressly made confidential under the Act or other law. *Id.* You seek to withhold the information at issue under section 552.103 of the Government Code. However, section 552.103 is discretionary in nature 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. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the authority may not withhold the information subject to section 552.022(a)(3) under section 552.103. As you raise no further exceptions to disclosure of this information, the authority must release the information we marked pursuant to section 552.022(a)(3) of the Government Code. However, we will consider your argument against disclosure of 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 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 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.

You state, and provide documentation demonstrating, a lawsuit styled *Cherrye Williams, Individually, and as the Independent Executrix of the Estate of Kellie Rose Dennis v. Cathy McKnight and The Dallas Housing Authority*, Cause No. DC-22-01850, was pending against the authority in the 14th Judicial District in Dallas County, Texas, prior to the receipt

of the present request for information. You state the information at issue relates to the pending litigation. Based on your representations and our review, we find litigation was pending at the time the authority received the present request, and the information at issue is related to the pending litigation for the purposes of section 552.103. Accordingly, the authority 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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties in the anticipated 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 concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the authority must release the information we marked pursuant to section 552.022(a)(3) of the Government Code and 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.

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,

Sarah E. Reese
Attorney
Open Records Division

SER/jxd

Ref: ID# 949510

Enc. Submitted documents

c: Requestor
(w/o enclosures)