



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 8, 2022

Mr. Kieran Hillis
Public Information Coordinator
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2022-19616

Dear Mr. Hillis:

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# 955002 (OOG ID# 160-22).

The Office of the Governor (the "governor's office") received a request for all communications and attachments received by the Executive Office of the governor's office, including five named individuals and three specified e-mail address domains for a specified time period. You state the governor's office will rely prior rulings from this office as previous determinations and withhold or release some of the requested information in accordance with these rulings.¹ Additionally, you state the governor's office will withhold or release some requested information designated by the United States Department of Homeland Security ("DHS") as "FOR OFFICIAL USE ONLY" ("FOUO") in accordance with a determination by DHS.² You claim the submitted information is excepted from

¹ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

² See 6 U.S.C. § 482(e) (providing information obtained by state or local government from federal agency under section 482 shall remain under control of the federal agency, and a state or local law authorizing or requiring such a government to disclose information shall not apply to such information); see also Department of Homeland Security Management Directive System, MD Number 11042.1 at 8 (Jan. 6, 2005) (establishing DHS policies and procedures regarding safeguarding FOUO information to include instructing state agency in possession of FOUO information from another governmental agency to handle the information in accordance with the guidance provided by the other governmental agency).

disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.³

Section 552.103 of the Government Code provides, in part, the following:

(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 that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate 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 the pending or anticipated litigation. *See 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 prongs of this test for information to be excepted from disclosure under section 552.103(a).

You state, prior to the date the governor's office received the request for information, the three following lawsuits involving the governor's office were pending in district court and in the Third and Fourth Courts of Appeals, respectively: *Galovelho, LLC v. Abbott*, case no. 219-02595-2020; *Stand for Something Group Live, LLC v. Abbott*, cause no. D-1-GN-20-004403; and *City of San Antonio v. Abbott*, case no. 2021C116133. Based upon your representations and our review, we find the governor's office was a party to pending litigation on the date it received the request. Further, you state, and we agree, the information at issue relates to the pending litigation. Accordingly, we conclude the governor's office may withhold the submitted information under section 552.103.

³ **Error! Main Document Only.** This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

We note once the 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 No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation is concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (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,

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/mo

Ref: ID# 955002

Enc. Submitted documents

c: Requestor
(w/o enclosures)