



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 22, 2022

Ms. Sarah Hodges
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2022-21459

Dear Ms. Hodges:

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# 961046 (C.A. File No. 22PIA0547).

The Harris County Elections Administration Office (the "county") received a request for specified information pertaining to a particular election.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, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body; [and]

¹ You state the county 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).

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(2), (17). The submitted information includes the names and titles of county employees which are subject to section 552.022(a)(2). The submitted information contains court-filed documents that are subject to section 552.022(a)(17). The court-filed documents must be released unless the information is made confidential under the Act or other law. *See id.* § 552.022(a)(17). Although you raise section 552.103 of the Government Code for this information, this section is a discretionary exception to disclosure 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 Gov't Code § 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 county may not withhold the information subject to section 552.022(a)(1) or section 552.022(a)(17) under section 552.103 of the Government Code. As you raise no further exceptions to disclosure for this information, the county must release the information we marked pursuant to section 552.022(a)(2) and section 552.022(a)(17) of the Government Code.

Section 552.103 of the Government Code provides, in 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 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 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). *See* ORD 551.

You state that, prior to the county's receipt of the instant request for information, a lawsuit against the county styled *Harris County Republican Party v. Harris County Election Administrator*, Cause No. 2022-13752 was filed in the 165th Judicial District of Harris County, Texas, and is currently pending on appeal before the First District Court of Appeals. You further state the remaining information is related to the pending litigation because it pertains to the claims in the lawsuit. Based upon these representations and our review of the information at issue, we find the information at issue relates to the litigation that was pending when the county received the request for information. Accordingly, the county 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 pending 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).

In summary, the county must release the information we marked pursuant to section 552.022(a)(2) and section 552.022(a)(17) of the Government Code. The county 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,

Chase D. Young
Assistant Attorney General
Open Records Division

CDY/eb

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Enc. Submitted documents

c: Requestor
(w/o enclosures)