



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2022

Mr. Lucas Babin
Criminal District Attorney
Tyler County
100 West Bluff, Courthouse Annex
Woodville, Texas 75979

OR2022-24518

Dear Mr. Babin:

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# 966052.

The Tyler County Criminal District Attorney's Office (the "district attorney's office") received two requests from the same requestor for portions of a prosecutor's file for a specified case. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code and privileged under rule 192.5 of the Texas Rules of Civil Procedure. We have considered your arguments and reviewed the submitted information.

Section 552.103 of the Government Code provides in relevant part 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). The 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 that (1) litigation is 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 prongs of this test for information to be excepted from disclosure under section 552.103(a).

You state, prior to the district attorney's office's receipt of the instant requests, a lawsuit style *Netflix v. Babin*, Cause No. 9:22cv31, was filed against the district attorney in the United States District Court for the Eastern District of Texas, Lufkin Division. Therefore, we agree litigation was pending on the date the district attorney's office received the present requests for information. You also state the information at issue pertains to the substance of the lawsuit claims. Based on your representations and our review, we find the submitted information is related to the pending litigation. Therefore, we conclude the district attorney's office may withhold the submitted information under section 552.103 of the Government Code.¹

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

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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Enc. Submitted documents

c: Requestor
(w/o enclosures)