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ATTORNEY GENERAL OF TEXAS

September 8, 2022

Mr. Robert J. Davis
Counsel for Collin County Sheriff's Office
Matthews, Shiels, Knott, Eden, Davis & Beanland, L.L.P.
8131 LBJ Freeway, Suite 700
Dallas, Texas 75251

OR2022-27375

Dear Mr. Davis:

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# 971142 (Ref. No. 1600/71878).

The Collin County Sheriff's Office (the "sheriff's office") received a request for a specified personnel file pertaining to a named former deputy and e-mails for a specified time period. You state the sheriff's office has released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, and 552.152 of the Government Code. We have considered the exceptions you claim 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). 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 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, 481-82 (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 from disclosure under section 552.103(a). See ORD 551.

For purposes of section, “litigation” includes contested cases conducted in a quasi-judicial forum. Open Records Decision Nos. 588 at 2 (1991), 474 at 6 (1987), 368 at 2 (1983), 301 at 1-2 (1982). Factors this office considers in determining whether an administrative proceeding is conducted in a quasi-judicial forum includes whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. See ORD 588 at 3-4.

You explain, and provide supporting documentation showing, the Collin County Sheriff's Office Civil Service Commission (the “commission”) provides a forum for employees to contest personnel actions taken against them, and, upon a final determination by the commission, an employee may appeal by filing a petition in a Collin County district court. The supporting documentation also shows the commission appeal hearings include a pre-hearing conference and a formal exchange between both parties of copies of exhibits to be used during the hearing and a list of all witnesses each party intends to call. Further, the supporting documentation shows, during a commission hearing, the appellant may be represented by counsel, witnesses may be called to testify, and a record or transcript of the proceedings may be created. Based upon the representations and our review, we find the sheriff's office has demonstrated the commission's appeal process is conducted in a quasi-judicial forum and, thus, constitutes litigation for purposes of section 552.103 of the Government Code.

You state, and provide documentation showing, a sheriff's office employee has appealed disciplinary action taken against him, and a hearing has been set before the commission. You further state, and the documentation shows, the notice of appeal was filed prior to the receipt of the instant request for information by the sheriff's office. Accordingly, we find the sheriff's office was involved in litigation on the date it received the request for information. Further, you argue the information at issue relates to the issue in the pending hearing. Upon review of these arguments and the information at issue, we find the information at issue is related to litigation involving the sheriff's office that was pending on the date the request was received. Accordingly, we find the sheriff's office may withhold the submitted information under section 552.103 of the Government Code.¹

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

We note, however, once the opposing party in pending litigation has seen or had access to information that is related to the litigation, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the anticipated litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, we note the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 at 3 (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,

Sarah E. Reese
Attorney
Open Records Division

SER/jxd

Ref: ID# 971142

Enc. Submitted documents

c: Requestor
(w/o enclosures)