



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 12, 2022

Mr. Joe D. Gonzales  
Criminal District Attorney  
Bexar County  
101 West Nueva Street  
San Antonio, Texas 78205

OR2022-38383

Dear Mr. Gonzales:

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# 989683 (DA 22-0854 BCSO ORR 28755 R010997).

The Bexar County Sheriff's Office (the "sheriff's office") received a request for photographs and video recordings pertaining to a specified incident. 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 portions of the submitted information are not responsive to the instant request because they do not consist of photographs or video recordings. The sheriff's office need not release non-responsive information in response to this request, and this ruling will not address that information.

Section 552.103 of the Government Code provides 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 that the section 552.103(a) exception 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You assert the responsive information is related to pending litigation to which the sheriff's office is a party. You state, and submit documentation demonstrating, prior to receipt of the instant request, a lawsuit styled *Smith v. Bexar County*, Cause No. 2022CI13997, was filed in the District Court of the 408th Judicial District, Bexar County, Texas. You further state the litigation was pending when the sheriff's office received the instant request. Upon review, we agree litigation was pending on the date the sheriff's office received the present request for information. You also state, and we agree, the information at issue is related to the pending litigation. Therefore, we conclude the sheriff's office may withhold the responsive information under section 552.103 of the Government Code.

We note 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. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the 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).

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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/jxd

Ref: ID# 989683

Enc. Submitted documents

c: Requestor  
(w/o enclosures)