



May 22, 2000

Ms. Katherine Minter Cary
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2000-2016

Dear Ms. Cary:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135413.

The Office of the Attorney General (the "Attorney General") received a request for "[a]ny emails, memos, or other communications regarding the missed deadline in the Calvin Burdine case. This request refers to the 120-day deadline U.S. District Judge David Hittner imposed on the state of Texas to either retry or release Burdine." The requestor also seeks a list of the attorneys in the appellate division on specified dates. You indicate that you have released some of the responsive information to the requestor, but have not released other information pending a decision. You have submitted the information you seek to withhold for our review and claim that it is excepted from required public disclosure. The submitted information consists of internal agency electronic communications, attorney handwritten notes, legal memoranda, and draft legal pleadings marked with the exceptions you claim. You also contend that certain portions of the submitted material are not responsive to the request or are not public information subject to the Public Information Act, or in the alternative, that they are excepted from disclosure.

Initially, you argue that all of the submitted information, except for one folder of documents labeled "E-mails with Personal Information Redacted," is excepted from disclosure by section 552.103 of the Government Code. Section 552.103, the "litigation exception," excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. Gov't Code § 552.301(e)(1)(A). In order to meet this burden, the governmental body must show that:

(1) litigation was pending or reasonably anticipated on the date of the request for information, and (2) the information at issue is related to that litigation. Gov't Code § 552.103; *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *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 under section 552.103(a).

You explain that the Attorney General was involved in federal litigation on the date of the request. *Burdine v. Johnson*, No. 99-21034 (5th Cir. March 3, 2000) (order granting motion to stay release pending appeal). You have provided several orders in that cause. Additionally, you state that this federal habeas corpus proceeding is currently pending. You have demonstrated that litigation was pending on the date of the request and is currently pending.

We now examine whether the requested information is related to the pending litigation. "Ordinarily, the words 'related to' mean 'pertaining to,' 'associated with' or 'connected with.'" *Texas Legal Found.*, 958 S.W.2d at 483. You contend that the lawsuit is related to the subject matter of most of the requested information. We have examined the submitted materials and agree that they are related to the pending litigation. The Attorney General may withhold all of the submitted information for which you claim section 552.103.

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 party in the anticipated 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).

Finally, you contend that the personal cellular phone numbers and personal electronic mail addresses contained in the submitted folder "E-mails with Personal Information Redacted" are excepted from disclosure by section 552.117 of the Government Code. Section 552.117 provides in part:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

(1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024.

Section 552.117(1), together with section 552.024, permits a current or former government official or employee to choose whether to allow public access to information covered by section 552.117. You indicate that the employees or officials whose personal numbers and addresses are responsive in this instance have elected under section 552.024 of the Government Code to deny public access to their home telephone numbers and addresses. We believe that section 552.117 covers both personal cellular phone numbers and home electronic mail addresses. The legislative history of section 552.117 indicates that its purpose is to protect public employees from being harassed at home. *See* House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985). With this purpose in mind, we conclude that both a personal cellular phone number and a home electronic mail address are “information that relates to” a person’s home address or home telephone number, and is, therefore, within the scope of section 552.117. *Cf.* Open Records Decision No. 622 (1994) (in enacting section 552.117, the legislature intended to include former home addresses and telephone numbers in the phrase “information relating to the home address or home telephone number” of a public employee). Consequently, we conclude that the submitted personal cellular phone numbers and home electronic mail addresses that you have marked are within the scope of section 552.117 and must be withheld.

We do not address your arguments that portions of the submitted material are not public information or that they are not responsive to the request. Even assuming that these materials are indeed public information and are responsive, the documents are also related to the pending litigation and are protected from disclosure by section 552.103. Likewise, because we make a determination for all the submitted documents under sections 552.103 and 552.117, we need not address your additional arguments against disclosure. You may withhold all of the submitted information.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Don Ballard
Assistant Attorney General
Deputy Chief, Open Records Division

JDB/lnc

Ref: ID# 135413

Encl. Submitted documents

cc: Mr. Dave Harmon
State Reporter
Austin American-Statesman
305 South Congress Avenue
Austin, Texas 78704
(w/o enclosures)