



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 9, 2009

Ms. Melanie Barton
Assistant District Attorney
Dallas County
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2009-12680

Dear Ms. Barton:

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# 354671.

Dallas County (the "county") received six requests from the same requestor for e-mail communications of several named individuals during specified periods of time. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor. Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released.)

Section 552.103 of the Government Code provides in relevant 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

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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.

Id. § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 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 is pending or reasonably anticipated on the date that the request for information is received, 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, 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). Both prongs of this test must be satisfied in order for information to be excepted under section 552.103(a). See ORD 551 at 4.

You state the submitted information relates to a lawsuit styled *James Edwards v. Dallas County*, No. 08-07871-E. You inform us the county filed an appeal, which was pending on the date the county received the instant request. Based upon your representations, we conclude litigation involving the county was pending when the county received the request. You also explain how the information at issue relates to the pending litigation. Based on your representations and our review of the information, we agree the information at issue relates to pending litigation for purposes of section 552.103. We, therefore, conclude the county may withhold the submitted information under section 552.103 of the Government Code.

We note, 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. See Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has been obtained from or provided to all opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

Paige Savoie

Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 354671

Enc. Submitted documents

cc: Requestor
(w/o enclosures)