



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 28, 2011

Ms. Doris Berry  
Assistant District Attorney  
Collin County District Attorney's Office  
2100 Bloomdale, Suite 20004  
McKinney, Texas 75071

OR2011-09172

Dear Ms. Berry:

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# 421918.

The Collin County District Attorney's Office received a request for all police reports related to three specified charges filed by a named person, any statements made by the named person regarding those charges, and all information in your possession related to three specified cause numbers. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.132, and 552.1325 of the Government Code.<sup>1</sup> We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the submitted information contains court-filed documents subject to section 552.022(a)(17) of the Government Code, which provides for the required public disclosure of "information that is also contained in a public court record," unless it is expressly confidential under "other law." Gov't Code § 552.022(a)(17). Thus, you may withhold the court-filed documents subject to section 552.022(a)(17) only to the extent they are confidential under "other law." Although you raise section 552.103 of the Government Code, this is a discretionary exception to disclosure that protects only a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental

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<sup>1</sup>While you also raise section 552.117, you have not presented arguments explaining how this exception applies to the submitted information, as required by section 552.301. Thus, this ruling does not address that exception.

body may waive section 552.103); Open Records Decision Nos. 663 (1999) (governmental body may waive section 552.103), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022(a), and you may not withhold any of the court-filed documents under this exception. As you raise no additional exceptions for these documents, which we have marked, they must be released to the requestor.

We next turn to your arguments against disclosure of the remaining submitted information not subject to section 552.022(a). 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 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 applies 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 requested information is related to that litigation. *See 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). The governmental body must meet both parts of this test for information to be excepted under section 552.103(a). *See* Open Records Decision No. 551 at 4 (1990).

You argue the submitted information is excepted under section 552.103 because it is related to pending criminal prosecutions brought by your office. You provide documentation showing that, prior to your receipt of the request for information, informations were filed in Collin County Court of Law No. 2 for the three cases at issue. You state these cases are still pending. Therefore, we find litigation was pending on the date you received the request 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 information at issue is related to the pending litigation. Therefore, we conclude you may generally withhold the submitted information under section 552.103 of the Government Code.

We note, however, it appears the defendant has seen or had access to some of the information at issue, which we have marked. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, once the opposing party in pending litigation has seen or had access to information related to the litigation, there is no interest in withholding such information under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Accordingly, you may withhold the portions of the information at issue that the defendant has not seen or had access to under section 552.103 of the Government Code.<sup>2</sup> We note the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). However, the information we have marked may not be withheld under section 552.103.

We note the remaining information contains information subject to section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right to privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Additionally, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate and embarrassing and of no legitimate public interest. Thus, you must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We also note the remaining information contains e-mail addresses subject to section 552.137 of the Government Code.<sup>3</sup> Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by

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<sup>2</sup> Because our ruling as to this information is dispositive, we do not address your remaining arguments against its disclosure.

<sup>3</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses we have marked are not of a type specifically excluded by section 552.137(c). Accordingly, you must withhold the e-mail addresses we have marked under section 552.137, unless their owners have affirmatively consented to disclosure.<sup>4</sup>

In summary, you must release the information we have marked under section 552.022(a)(17) and the information we have marked that the defendant has already seen or had access to. In releasing this information, you must withhold the information we have marked under section 552.101 in conjunction with common-law privacy and the e-mail addresses we have marked under section 552.137, unless the owners have affirmatively consented to release. You may withhold the remaining information under section 552.103.

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](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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/bs

Ref: ID # 421918

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup> We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.