



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 11, 2013

Ms. Elizabeth Hanshaw Winn  
Assistant County Attorney  
Transactions Division  
Travis County  
P.O. Box 1748  
Austin, Texas 78767-1748

OR2013-11829

Dear Ms. Winn:

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# 492972.

The Travis County District Attorney's Office (the "district attorney's office") received a request for three named employees' e-mails pertaining to issues arising from the arrest of the district attorney. You claim the requested information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note some of the information, which we have marked, is not responsive to the request as it was created after the district attorney's office's receipt of the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the district attorney's office need not release that information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); *Open*

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<sup>1</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received).

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). The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See id.* § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) 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, 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). ORD 551 at 4.

You state the requested information is related to civil litigation concerning the removal from office of the current district attorney. Upon review, we find that the responsive information is related to litigation, to which the district attorney is a party as a consequence of her employment, that was pending when the request for information was received. We therefore conclude the district attorney's office may withhold the information at issue under section 552.103 of the Government Code.<sup>2</sup>

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 either been obtained from or provided to all parties to 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 been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* 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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lauren E. Kleine  
Assistant Attorney General  
Open Records Division

LEK/bhf

Ref: ID# 492972

Enc. Submitted documents

c: Requestor  
(w/o enclosures)