



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 5, 2013

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

OR2013-15526

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# 498414.

The Travis County District Attorney's Office (the "district attorney's office") received a request for (1) all applications for leave time submitted by a named individual during a specified time period, (2) pay stubs for a named individual during a specified time period, (3) information pertaining to reimbursement requests submitted for a named individual during a specified time period, (4) a named individual's calendar during a specified time period, and (5) e-mail correspondence to or from any district attorney's office employee in which a named individual or specified e-mail address was a sender or recipient during a specified time period. You state you have released some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note in a letter dated July 16, 2013, the district attorney's office states it wishes to withdraw its request for an open records decision with regard to the submitted pay stubs because the requestor has clarified or narrowed the request for information, and you have released the information subject to the more narrowly tailored request. Accordingly, we find the pay stubs are not responsive to the request. This ruling does not address the public

availability of the submitted pay stubs. We will, however, consider the remaining submitted information.

Next, we note a portion of the submitted responsive information, which we have marked, may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-13131 (2013). In Open Records Letter 2013-13131, we determined the district attorney's office must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.137 of the Government Code. We also determined the district attorney's office must release the remaining information at issue. You now raise section 552.103 of the Government Code for the information at issue. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the district attorney's office may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential by law. Although you raise section 552.103, this section does not prohibit the release of information or make information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, to the extent any portion of the responsive information was released in accordance with Open Records Letter No. 2013-13131, the district attorney's office may not now withhold such information under section 552.103. As we have no indication the law, facts, and circumstances on which Open Records Letter No. 2013-13131 was based have changed, the district attorney's office must continue to rely on that ruling as a previous determination and withhold or release any identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the responsive information is not identical to information that was subject to Open Records Letter No. 2013-13131, we will consider your arguments under sections 552.101 and 552.103 of the Government Code.

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 responsive 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's office is a party as a consequence of the district attorney's employment, that was pending when the request for information was received. We therefore conclude the district attorney's office may withhold the responsive information under section 552.103 of the Government Code.¹

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).

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

In summary, the district attorney's office must continue to rely on Open Records Letter No. 2013-13131 as a previous determination and withhold or release any identical responsive information in accordance with that ruling. The district attorney's office may withhold the remaining responsive information under section 552.103 of the Government Code.

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, 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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 498414

Enc. Submitted documents

c: Requestor
(w/o enclosures)