



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2014

Mr. Wroe Jackson
General Counsel
Office of the Secretary of State
P.O. Box 12697
Austin, Texas 78711-2697

OR2014-01411

Dear Mr. Jackson:

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# 513555.

The Office of the Secretary of State (the "secretary of state's office") received a request for all documents and correspondence to, from, and between a named individual and any state employee, state official, or member of the public regarding "[V]oter ID law" for a specified time period.¹ You claim the submitted 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.²

Initially, we note some of the submitted correspondence, which we have marked, is not responsive to the present request for information because it does not consist of documents

¹You state, and submit documentation which demonstrates, the secretary of state's office sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

or correspondence sent to, from, and between the named individual and any state employee, state official, or member of the public. This ruling does not address the public availability of any information that is not responsive to the request, and the secretary of state's office need not release such information in response to this request.

Section 552.103 of the Government Code provides in 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 that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information at issue. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

You contend the information at issue is excepted from disclosure under section 552.103 because it relates to three pending federal lawsuits in which the Secretary of State, in his official capacity, is a party.³ You explain, and have provided documentation to support your assertion, the lawsuits were pending on the date the secretary of state's office received the present request for information. Further, you explain the information at issue is related to the pending litigation because the individual named in the request for information, the Director of Elections for the secretary of state's office, was deposed and called as a witness in a previous lawsuit related to the implementation of the voter identification law and is

³The pending lawsuits are the following: *Veasey v. Perry*, No. 2:13-CV-193 (S.D. Tex. filed June 26, 2013); *United States v. Texas*, No. 2:13-CV-263 (S.D. Tex. filed Aug. 22, 2013); and *Texas State Conference of NAACP Branches v. Steen*, No. 2:13-CV-291 (S.D. Tex. filed Sept. 17, 2013).

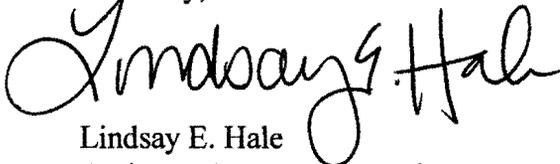
expected to again be deposed or sought as a witness in the pending litigation. Based on these representations and our review of the information at issue, we find litigation involving the secretary of state's office was pending on the date the request for information was received and the information at issue is related to the pending litigation for purposes of section 552.103 of the Government Code. Accordingly, the secretary of state's office may withhold the responsive information under section 552.103(a) of the Government Code.

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).

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

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Ref: ID# 513555

Enc. Submitted documents

c: Requestor
(w/o enclosures)

