



January 7, 2015

Ms. Michelle T. Rangel  
Assistant County Attorney  
County of Fort Bend  
401 Jackson Street, Third Floor  
Richmond, Texas 77469

OR2015-00249

Dear Ms. Rangel:

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# 549038.

Fort Bend County (the "county") received nine requests for information pertaining to specified grievances filed against county employees and information pertaining to the authorization of payment and/or payment by the county of legal fees to represent these employees in the grievances with the State Bar of Texas (the "state bar"). You state the county does not have information responsive to portions of the ninth request.<sup>1</sup> You state the county will release some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code.

---

<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note some of the submitted information is not responsive to the first request because it was created after the county received the first request for information. Therefore, the county need not release information to the first requestor that is not responsive to his request.

Next, we note the submitted information includes minutes of a public meeting of the county. Minutes of a governmental body's public meetings are specifically made public under the Open Meetings Act, chapter 551 of the Government Code. *See* Gov't Code § 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying on request to governmental body's chief administrative officer or officer's designee). As a general rule, the exceptions to disclosure found in the Act, such as section 552.103 of the Government Code, do not apply to information other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). However, as section 552.101 of the Government Code applies to confidential information, we will consider the applicability of this exception to the information at issue, which we have marked. We will also consider your arguments under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code for the information not subject to section 551.022 of the Government Code.

Next, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[,]" unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although you assert the information subject to section 552.022, which we have marked, is excepted from release under section 552.103 of the Government Code, this section is discretionary and does not make information confidential under the Act. *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 section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the county may not withhold the information subject to section 552.022 under section 552.103. However, because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address your argument under section 552.101 for the information we have marked subject to section 552.022. We will also consider your

---

<sup>2</sup>We 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.

arguments under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code for the information not subject to section 552.022 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information made confidential by other statutes. Gov’t Code § 552.101. You contend the submitted information is confidential under rule 2.16 of the Texas Rules of Disciplinary Procedure, which provides that certain records of a grievance committee of the state bar are confidential.<sup>3</sup> TEX. R. DISCIPLINARY P. 2.16, *reprinted in* Gov’t Code tit. 2, subtit. G, app. A-1. We note that rule 2.16 applies only to records of the state bar. TEX. R. DISCIPLINARY P. 2.16. The information at issue consists of records of the county. We find that rule 2.16 is not applicable to the information at issue in the hands of the county. We therefore determine the information at issue is not confidential pursuant to rule 2.16 and may not be withheld under section 552.101 of the Government Code on that basis.

You also raise section 552.101 of the Government Code in conjunction with section 81.072(o) of the Government Code, which provides,

(o) Whenever a grievance is either dismissed as an inquiry or dismissed as a complaint in accordance with the Texas Rules of Disciplinary Procedure and that dismissal has become final, the respondent attorney may thereafter deny that a grievance was pursued and may file a motion with the tribunal seeking expunction of all records on the matter[.]

Gov’t Code § 81.072(o). You argue release of the submitted information would deny the assistant county attorneys at issue “their statutory right to deny that these grievances were pursued[.]” However, we note chapter 81 of the Government Code generally applies to the state bar and does not apply to records in the hands of the county. *See id.* § 81.033(a). Further, you inform us each of the grievances at issue was still pending and had not been disposed of on the date the county received the requests for information. Thus, we find the grievances were not dismissed and the dismissals have not become final. Therefore, we find you have not demonstrated how section 81.072(o) of the Government Code applies to the county’s records. Accordingly, the county may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with section 81.072(o) of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by section 560.003 of the Government Code, which provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint,

---

<sup>3</sup>We note that the rules of the state bar have the same effect as statutes. *See Bd. of Law Exam’rs v. Stevens*, 868 S.W.2d 773 (Tex. 1994).

voiceprint, or record of hand or face geometry). There is no indication the requestor has a right of access to the submitted fingerprint under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless the individual consents to disclosure). Accordingly, the county must withhold the submitted fingerprint, which we have marked, under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.103 of the Government Code provides in pertinent 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.

*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 documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation is pending or reasonably anticipated on the date the governmental body receives 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, 481 (Tex. App.—Austin 1997, orig. proceeding); *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 prongs of this test for information to be excepted from disclosure under section 552.103(a). *See* ORD 551 at 4.

This office has long held that for the purposes of section 552.103, "litigation" includes "contested cases" conducted in a quasi-judicial forum. *See* Open Records Decision Nos. 474 (1987), 368 (1983), 336 (1982), 301 (1982). Likewise, "contested cases" conducted under the Texas Administrative Procedure Act, chapter 2001 of the Government Code, constitute "litigation" for purposes of section 552.103. *See* Open Records Decision Nos. 588 (1991) (concerning former State Board of Insurance proceeding), 301 (concerning hearing before Public Utilities Commission). In determining whether an administrative

proceeding is conducted in a quasi-judicial forum, some of the factors this office considers are whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See* ORD 588.

In this instance, you state the remaining information is related to grievances filed with the state bar prior to the date the county received the requests for information. You explain grievances filed with the state bar are “litigation” because the state bar follows administrative procedures in handling such disputes. You state the state bar’s grievance process is a multi-level hearing process and “may result in trial of the grievance before an evidentiary panel of the grievance committee or by a district court, with or without a jury.” You explain during these hearings the parties are allowed to present evidence and present witness testimony. You explain the county is providing legal representation to the county employees who are the subjects of the grievances because the violations are alleged as a consequence of the assistant county attorneys’ employment. Based on your representations and our review, we find you have demonstrated the state bar’s administrative procedure for grievances is conducted in a quasi-judicial forum and, thus, constitutes litigation for purposes of section 552.103. Therefore, we determine the county was involved in pending litigation at the time it received the instant requests for information. Further, upon review, we find the remaining information is directly related to litigation that was pending at the time the county received the requests for information. Therefore, the county may withhold the remaining information under section 552.103 of the Government Code.<sup>4</sup>

We note 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 information has been obtained by all parties to the pending 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). Further, the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

In summary, the county must release the information we have marked under section 551.022 of the Government Code. The county must release the information we have marked pursuant to section 552.022(a)(17) of the Government Code. In releasing the court-filed documents, the county must withhold the fingerprint we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The county may withhold the remaining information under section 552.103 of the Government Code.

---

<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/cbz

Ref: ID# 549038

Enc. Submitted documents

c: 4 Requestors  
(w/o enclosures)