



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 26, 2015

Ms. Myrna S. Reingold
Legal Department
County of Galveston
722 Moody Street, 5th Floor
Galveston, Texas 77550-2317

OR2015-05836

Dear Ms. Reingold:

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# 557538.

The Galveston County Judge's Office (the "county judge's office") received a request for a specified draft report on the county's court system. The county judge's office claims the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code.¹ We have considered the exceptions the county judge's office claims and reviewed the submitted information.

The county judge's office informs us the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2014-22376 (2014). In Open Records Letter No. 2014-22376, we determined the county judge's office may withhold the submitted information under section 552.103 of the Government Code because the county judge's office reasonably anticipated litigation. However, the county judge's office informs us litigation is now pending. Therefore, we find the facts or circumstances on which Open Records Letter No. 2014-22376 was based have

¹Although the county judge's office raises section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). The proper exceptions to raise when asserting the attorney-client privilege and the attorney work product privilege for information not subject to section 552.022 of the Government Code are sections 552.107 and 552.111 of the Government Code, respectively.

changed. Thus, the county judge's office may not rely on Open Records Letter No. 2014-22376 as a previous determination and withhold any of the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, and 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 information is or is not excepted from disclosure). Accordingly, we will address the county judge's office's arguments against disclosure of the submitted information.

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 governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is 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, 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).

The county judge's office states, and provides documentation showing, a lawsuit styled *Quiroga v. Galveston County*, Cause No. 14-CV-1289, was pending against the county judge's office in the 212th District Court of Galveston County, Texas, and a second lawsuit styled *In re Galveston County Commissioner's Court*, Cause No. 01-14-00820-CV, was pending against the county judge's office in the First Court of Appeals of Houston, Texas, when it received the request for information. Therefore, we agree litigation was pending when the county judge's office received the request. We also find the county judge's office has established the submitted information is related to the pending litigation for purposes of

section 552.103(a). Therefore, the county judge's office may withhold the submitted information under section 552.103(a).²

However, once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 557538

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address the county judge's office's remaining arguments against disclosure.