



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 15, 2015

Ms. Ann-Marie Sheely
Assistant County Attorney
Transactions Division
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2015-26328

Dear Ms. Sheely:

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# 590726.

The Travis County Attorney's Office (the "county attorney's office") received a request for information pertaining to a specified expunction petition. The county attorney's office claims the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor made a previous request for the same information. The county attorney's office subsequently informed this office it had made information responsive to the earlier request available to the requestor upon payment of costs. Accordingly, we do not address the requestor's arguments regarding that

¹We 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.

previously-requested information. We note none of the submitted information is responsive to the previous request. Therefore, we will address the arguments of the county attorney's office to withhold the submitted information under the Act.

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 section 552.103 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 attorney's office informs us and provides documentation showing that, before the county attorney's office received the request for information, the requestor filed a lawsuit styled *Hopkins v. Escamilla*, Cause No. D-1-GN-15-003115, in the 345th Judicial District Court of Travis County against the county attorney's office. Thus, we agree litigation was pending when the county attorney's office received the request. Furthermore, upon review we find the submitted information is related to the pending proceedings for purposes of section 552.103. Therefore, the county attorney's office may withhold the submitted information under section 552.103.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bhf

Ref: ID# 590726

Enc. Submitted documents

c: Requestor
(w/o enclosures)