



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

,July 6, 2016

Ms. Kathleen M. Kennedy  
Chief Civil Attorney  
Jefferson County Criminal District Attorney's Office  
1085 Pearl Street, 3rd Floor  
Beaumont, Texas 77701

OR2016-15296

Dear Ms. Kennedy:

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# 617261.

The Jefferson County Criminal District Attorney's Office (the "district attorney's office") received a request for (1) information pertaining to charges relating to a specified type of crime during a specified time period, (2) the district attorney's office's employee policies, and (3) time sheets for a named employee during a specified time period. You indicate, and the requestor agrees, the district attorney's office has released some of the requested information to the requestor. You state the district attorney's office does not possess some of the requested information.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.103 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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<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).

Initially, we note the requestor asserts the district attorney's office has previously released the submitted time sheets. 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 id.* § 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 information that was previously released unless its release is expressly prohibited by law or the information is confidential by law. You claim section 552.103 of the Government Code for the submitted information. Section 552.103 is a discretionary exception that protects a governmental body's interests and may be waived. *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. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 does not prohibit the release of information or make information confidential. Thus, to the extent the submitted information was previously released, the district attorney's office may not withhold it under section 552.103 of the Government Code. However, the district attorney's office also claims section 552.152 of the Government Code. Because this section can make information confidential under the Act, we will consider the applicability of this exception to any information that was previously released. Further, to the extent the submitted information was not previously released, we will address the district attorney's office's arguments against disclosure.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You state the named employee is an investigator for the district attorney's office. You argue "to produce [the named employee's] arrival and departure times can and will jeopardize his personal safety and very well could jeopardize the integrity of an investigation." We note, however, the submitted time sheets do not show the named individual's arrival and departure times. Upon review, we find the district attorney's office has not demonstrated the release of the information at issue would subject the named employee to a substantial risk of physical harm. Thus, the district attorney's office may not withhold any portion of the information at issue under section 552.152 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 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 district attorney's office states, and provides documentation showing, it was a party to pending litigation when it received the request for information. Therefore, we agree litigation was pending when the district attorney's office received the request. Additionally, you state, and we agree, the submitted information is related to the pending litigation for purposes of section 552.103(a). Therefore, the district attorney's office may withhold the submitted information under section 552.103(a).

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.

In summary, the district attorney's office may withhold any information that was not previously released under section 552.103 of the Government Code. The district attorney's

office must release any previously released information pursuant to section 552.007 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](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,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/bw

Ref: ID# 617261

Enc. Submitted documents

c: Requestor  
(w/o enclosures)