



July 7, 2016

Mr. J. Greg Hudson
Counsel for Collin County
Hudson & O'Leary, LLP
1010 MoPac Circle, Suite 201
Austin, Texas 78746

OR2016-15433

Dear Mr. Hudson:

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# 617456.

The Collin County Commissioners, County Judge, and County Auditor (collectively, the "county"), which you represent, received a request for (1) bills and invoices received by the county for legal services rendered by named individuals, as well as any court orders pertaining to such bills and invoices; and (2) information responsive to prior requests made by the requestor or a named individual "that have been generated or received since the time of [the county's] last production and therefore have not previously been produced." You state you have released some information to the requestor. You claim some of the requested information is not subject to the Act. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

You assert some of the requested information pertaining to phone logs of district judges constitutes judicial records not subject to the Act. The Act is applicable to information "written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body[.]" Gov't Code § 552.002(a)(1). However, the Act's definition of "governmental body" "does not include the judiciary." *Id.* § 552.003(1)(B). Information "collected, assembled, or maintained by or for the judiciary" is not subject to the Act but instead is "governed by rules

adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov’t Code § 552.003(1)(B) prior to enactment of Gov’t Code § 552.0035). Rule 12 of the Rules of Judicial Administration governs the public disclosure of judicial records, which are not subject to the Act. TEX. R. JUD. ADMIN. 12.1, 12.3; Gov’t Code §§ 552.003(a)(B), .0035(a). Rule 12.2 of the Rules of Judicial Administration defines a “judicial record” as “a record made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function[.]” TEX. R. JUD. ADMIN. 12.2(d).

You contend the requested information pertaining to phone logs of district judges constitutes judicial records maintained by the county on behalf of the judiciary. Based upon your representation, we conclude the information pertaining to phone logs of district judges is not subject to the Act and need not be released under the Act.

Section 552.103 of the Government Code provides 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). A 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 (1) litigation was 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You contend the submitted information is excepted from disclosure under section 552.103. You inform us, and have provided documentation demonstrating, litigation pertaining to the payment of special prosecutors for their services in a specified prosecution and styled *Jeffory*

Blackard v. Attorney Pro Tem Kent A Schaffer, et al, Cause No. 380-05246-2015, was pending in the District Court of Collin County Texas, 380th Judicial District on the date the county received the request. You further explain the information at issue is related to the pending lawsuit because it pertains to payments made to the special prosecutors in the specified prosecution. Based on your representations and our review, we find litigation was pending when the county received this request for information and the information at issue is related to the pending litigation for purposes of section 552.103(a). Therefore, the county may withhold the submitted information under section 552.103(a) of the Government Code.

We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. Thus, if the opposing party has seen or had access to information relating to the pending litigation through discovery or otherwise, there is no interest in withholding such information Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103 ends once the litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the requested information pertaining to phone logs of district judges is not subject to the Act and need not be released under the Act. The county may withhold the submitted information under section 552.103(a) 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, 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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/sdk

Ref: ID# 617456

Enc. Submitted documents

c: Requestor
(w/o enclosures)