



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 11, 2016

Mr. William Schultz
Assistant District Attorney
Denton County
1450 East McKinney, Suite 3100
Denton, Texas 76209

OR2016-15612

Dear Mr. Schultz:

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# 616771.

Denton County (the "county") received a request for seventeen categories of information pertaining to the spraying for mosquitos. You state you have released some information to the requestor. You state the county does not have information responsive to portions of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.117, and 552.152 of the Government Code.² We have considered the claimed exceptions and reviewed the submitted information.

¹We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

²While you also raise sections 552.102, 552.107, 552.108, 552.111, and 552.139, you have not presented arguments explaining how these exceptions apply to the submitted information, as required by section 552.301. Thus, this ruling does not address those exceptions. *See* Gov't Code §§ 552.301(e)(1)(A), .302. Although you raise section 552.1175 of the Government Code, we note section 552.117 of the Government Code is the proper exception to raise for information the county holds in an employment capacity. *See id.* §§ 552.117, .1175.

We first address your argument that the requested information should be withheld because the requestor is a “vexatious litigant” who has made multiple repetitive requests. Sections 552.232 and 552.275 of the Government Code provide governmental bodies with a method to handle repetitious or redundant requests, and requests that require large amounts of personnel time, respectively. See Gov’t Code §§ 552.232, .275. However, a governmental body may not refuse to comply with the requirements of the Act on the ground of administrative inconvenience. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976); see also Open Records Decision No. 497 at 4 (1988) (fact that submitting copies for review may be burdensome does not relieve governmental body of its responsibility to do so). Therefore, although you argue that the requested information should not be released due to the manner and number of the requests, the county may not refuse to comply with the Act on that basis. Thus, the county must release the submitted information unless it falls within the scope of an exception to disclosure. We will address your arguments against its disclosure under the Act.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(2) provides for the required public disclosure of “the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[,]” unless it is “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a)(2). Although you raise section 552.103 of the Government Code for this information, this is a discretionary exception to disclosure that may be waived and does not make information confidential under the Act. See *id.* § 552.007; *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 Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 473 (1987) (section 552.103 may be waived). As such, section 552.103 does not make information confidential for the purposes of section 552.022(a)(2), and the county may not withhold the categories of information at issue on that basis. However, you also raise sections 552.101, 552.117, and 552.152 of the Government Code. Because these exceptions make information confidential for purposes of the Act, we will address your arguments under these exceptions for the submitted information, along with your argument under section 552.103 for the categories of information not subject to required release under section 552.022(a)(2).

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, and submit a document demonstrating, the county employees involved have received threats. Further, you state release of this information would subject the employees to a serious threat of physical harm. Upon review, we find you have demonstrated release of the submitted information would subject an employee or officer to a specific substantial risk of physical harm. Thus, the county must withhold the submitted information under section 552.152 of the Government Code.³

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

Open Records Division
Office of the Attorney General

Ref: ID# 616771

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address the county's remaining argument against disclosure.