
From: TEXAS AG Public Information <texasag@govqa.us>
Sent: Thursday, April 16, 2020 10:58 AM
To: FOIA <foia@americanoversight.org>
Subject: [Ext][Records Center] Public Information Request :: R004013-040220

Attachments:

[Important update re Texas AG's Constitutional Law Conference.pdf](#)
[RE Texas AG Constitutional Law Conference Redacted.pdf](#)
[Evers \(R004013 R004014\) Long \(R004019\) 15 day.pdf](#)

--- Please respond above this line ---

April 16, 2020

Mr. Austin Evers
American Oversight
foia@americanoversight.org
VIA E-MAIL ONLY

Re: Public Information Request No. R004013

Dear Mr. Evers:

This e-mail is in response to your public information request to the Office of the Attorney General ("OAG"), received by the OAG on April 1, 2020.

The OAG has reviewed its files and has located the attached documents that are responsive to your request. Although the Public Information Act allows a governmental body to charge for copying documents, the attached documents are being provided to you at no charge.

Please note, however, that the OAG has redacted an e-mail address from the attached documents pursuant to section 552.137 of the Government Code and the previous determination issued by the Open Records Division. See Open Records Decision No. 684

(2009) (governmental bodies may withhold certain information without necessity of requesting decision from Open Records Division).

The OAG believes the remaining information responsive to your request is excepted from required public disclosure. We have requested a ruling on this information from the Open Records Division of the OAG. A copy of our brief to the Open Records Division is attached.

If you have any questions, please contact me at publicrecords@oag.texas.gov.

Sincerely,

Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General

To monitor the progress or update this request please log into the [Public Records Center](#)





Received by Open Records

APR 16 2020

KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 16, 2020

Mr. Justin Gordon
Open Records Division
Office of the Attorney General
P. O. Box 12548
Austin, TX 78711-2548

Re: Public Information Request Nos. R004013, R004014, R004019

Dear Mr. Gordon:

On April 1, 2020, the Office of the Attorney General ("OAG") received two written requests under the Public Information Act ("PIA"), Chapter 552, Government Code, from Mr. Austin Evers. On April 2, 2020, the OAG received a request for similar information from Ms. Julia Long.¹ Copies of the requests are attached as Exhibit A.

The OAG will release some information to Mr. Evers in response to Request No. R004013. However, the OAG asserts the remaining information responsive to the requests is excepted from required disclosure under the PIA. Pursuant to sections 552.301(b) and 552.301(e) of the Government Code, the OAG submits this brief to seek a decision as to whether section 552.103 of the Government Code applies to the information at issue. We have copied the requestors as recipients of this brief pursuant to sections 552.301(d) and 552.301(e-1) of the Government Code. Representative samples of the information at issue are attached as Exhibit B.

I. Information Excepted from Required Public Disclosure Under Section 552.103: Pending Litigation

Section 552.103(a) of the Government Code states that 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.

Gov't Code § 552.103(a). The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). The OAG has

¹ Please note the OAG was closed April 10, 2020 in observance of Good Friday.

the burden of providing relevant facts and documents to show that 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, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); ORD 551 at 4. The OAG must meet both prongs of this test for information to be excepted under section 552.103(a).

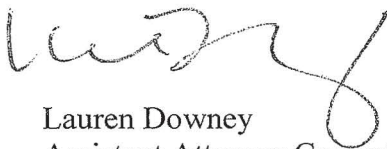
The documents at issue relate to three different lawsuits in which the OAG is representing the State of Texas. All three lawsuits were pending prior to the OAG's receipt of the instant requests. The representative sample of information in Exhibit B relates to the pending lawsuits and has not been seen or accessed by all parties in each respective pending litigation. Accordingly, the OAG asserts the representative sample of information in Exhibit B may be withheld from required public disclosure under section 552.103 of the Government Code.

II. Conclusion

The OAG respectfully requests a decision from the Open Records Division regarding the applicability of the argued exception as provided by the PIA.

Should you need additional information, please feel free to contact me at (512) 475-4213 or publicrecords@oag.texas.gov.

Sincerely,



Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General

cc: Mr. Austin Evers
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005
(without enclosures)

Ms. Julia Long
Campaign for Accountability
611 Pennsylvania Avenue SE, #337
Washington, D.C. 20003
(without enclosures)

From: [Hacker, David](#)
To: [Hacker, David](#)
Cc: [Ingram, Kathy](#)
Subject: Important update re: Texas AG's Constitutional Law Conference
Date: Monday, March 16, 2020 10:31:04 AM

Dear esteemed speakers,

I write to you from my home office this morning as our country faces the challenges of COVID19. The Attorney General is thankful to each of you for agreeing to participate in our Constitutional Law Conference this June. But in light of recent events, we have decided to postpone the conference. I will let you know when we decide to reschedule it.

Thank you for your understanding. I look forward to gathering with you at a later date.

Best,
David

David J. Hacker
Special Counsel to the First Assistant Attorney General
Office of the Texas Attorney General
512-936-2330
David.Hacker@oag.texas.gov

From: [Hacker, David](#)
To: [Hiram Sasser](#)
Subject: RE: Texas AG Constitutional Law Conference
Date: Wednesday, March 11, 2020 10:51:23 AM
Attachments: [P_SPEAKER_INTAKE_REV_2020.pdf](#)

Hiram,

Fantastic! For next steps, I need you to fill out the attached speaker intake and tax forms. That will allow us to create a speaker contract for you. The intake form asks you to provide the costs of your travel, so please just give estimates at this time. Since you are taking an honorarium, you will receive the full \$2,000, but we still need travel cost estimates and after the conference we will need an invoice seeking payment of the \$2,000.

In the next few months, I will set up a time for everyone on the panel to join a conference call to plan what you all want to talk about.

Let me know if you have any questions.

Best,
David

David J. Hacker
Special Counsel to the First Assistant Attorney General
Office of the Texas Attorney General
512-936-2330
David.Hacker@oag.texas.gov

From: Hiram Sasser <>
Sent: Tuesday, March 10, 2020 6:25 PM
To: Hacker, David <David.Hacker@oag.texas.gov>
Subject: Re: Texas AG Constitutional Law Conference

I accept. I will take the flat honorarium to make it easier. Thank you.

Hiram Sasser

On Mar 10, 2020, at 5:45 PM, Hacker, David <David.Hacker@oag.texas.gov> wrote:

Hiram,

Every year, the Texas Attorney General hosts a Constitutional Law Conference for our 700+ attorneys. This year the conference is on June

11, 2020 at the Texas capitol building. We would like to invite you to participate on a panel discussing the future of *Employment Division v. Smith*. Confirmed co-panelists include Professor Mark Rienzi, Allyson Ho, and Professor Jim Oleske. We have invited Judge Kacsmaryk to moderate the panel.

We offer a flat \$2,000 honorarium or reimbursement of travel expenses up to that amount (either way, you may arrange your own travel to accommodate your schedule).

Please let me know if you can join us and don't hesitate to reach out if you have any questions.

Best,
David

David J. Hacker

Special Counsel to the First Assistant Attorney General

Office of the Texas Attorney General

512-936-2330

David.Hacker@oag.texas.gov