



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 14, 2015

Ms. Evelyn W. Kimeu  
Staff Attorney  
City of Houston  
1200 Travis  
Houston, Texas 77002-6000

OR2015-19073

Dear Ms. Kimeu:

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# 578937 (ORU No. 15-3803).

The Houston Police Department (the "department") received a request for the complete case file related to a specified incident. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments you have forwarded to this office from the Harris County District Attorney's Office (the "district attorney's office"). *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released).

Initially, we note, and you acknowledge, the department has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. *Id.* § 552.301. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public and must be released unless there is a compelling reason to withhold it. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). However, the need of another governmental body to withhold information under section 552.103 can provide a compelling reason under section 552.302. *See* Open Records Decision No. 469 (1987) (university may withhold information under

Gov't Code § 552.103 predecessor to protect district attorney's interest in anticipated criminal litigation). Because you provide a representation that the district attorney's office asserts the information at issue should be withheld under section 552.103 of the Government Code. We will consider whether the information at issue may be withheld on behalf of the district attorney's office under section 552.103.

Section 552.103 of the Government Code provides, in relevant part:

(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 under section 552.103(a). *See* ORD 551 at 4.

You indicate, and provide documentation demonstrating, that an application for writ of habeas corpus, associated with a lawsuit styled *The State of Texas v. Robert Golden*, Cause No. 125179, initiated in the 338th Judicial District Court in Harris County, Texas, was pending in the Court of Criminal Appeals prior to the department's receipt of this request for information. You acknowledge the department is not a party to the pending lawsuit and, therefore, does not have a litigation interest in the matter for purposes of section 552.103. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (statutory predecessor to section 552.103 only applies when governmental body is party to litigation). In such a situation we require an affirmative representation from the governmental body with the litigation interest that it wants the information at issue withheld from disclosure under section 552.103. You provide us with a representation from the district attorney's office in which the district attorney's office requests the information at issue be withheld from

disclosure under section 552.103. You also state the submitted information pertains to the substance of the pending action. Upon review, we agree the information at issue is related to litigation that was pending on the date the department received the present request for information. Therefore, we conclude the department may withhold the submitted information under section 552.103 of the Government Code on behalf of the district attorney's office.

However, once the information has been obtained by all parties to 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](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,



Joseph Behrke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 578937

Enc. Submitted documents

c: Requestor  
(w/o enclosures)