



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 2, 2016

Mr. John A. Haislet  
Senior Assistant City Attorney  
Legal Department  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

OR2016-05024

Dear Mr. Haislet:

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# 600864 (File No. A15-001292).

The City of College Station (the "city") received a request for all documents created, obtained, or reviewed in a specified investigation of the city's fire department and all recommendations made to the City Manager's Office as a result of the specified investigation. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.106, and 552.111 of the Government Code. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we note you have not submitted information responsive to the portion of the request seeking all recommendations made to the City Manager's Office as a result of the specified investigation. To the extent information responsive to this portion of the request existed and was maintained by the city on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *Id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body

concludes no exceptions apply to requested information, it must release information as soon as possible).

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). We note contested cases conducted under the Administrative Procedure Act (the "APA"), chapter 2001 of the Government Code, are considered litigation for purposes of section 552.103. See Open Records Decision No. 588 at 7 (1991).

You assert, prior to receipt of the instant request, a city firefighter was engaged in a worker's compensation claim that was pending before the Texas Department of Insurance Division of Workers' Compensation regarding alleged work-related injuries. You note such contested cases are generally governed by the APA. Labor Code § 410.153. You also assert the information at issue is related to the claim. Based on your representations and our review, we find the city has established that litigation was pending on the date it received the present request. Furthermore, we find the information at issue relates to the pending litigation. Therefore, the submitted information is subject to section 552.103 of the Government Code.

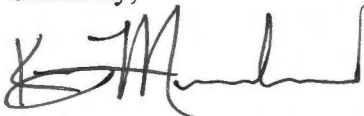
We note, however, the opposing party has seen or had access to some of the information at issue. The purpose of section 552.103 is to enable a governmental body to protect its

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, once the opposing party has seen or had access to information relating to the litigation through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Upon review, we find the information we have marked has been seen by the opposing party and may not be withheld under section 552.103. Therefore, with the exception of the information we have marked for release, the city may withhold the submitted information under section 552.103 of the Government Code.<sup>1</sup> We note the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 (1982). As you raise no further exceptions to disclosure, the city must release the remaining information.<sup>2</sup>

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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>2</sup>We note the information to be released contains a partial social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

Ref: ID# 600864

Enc. Submitted documents

c: Requestor  
(w/o enclosures)