



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 23, 2016

Ms. Andrea D. Russell
Counsel for the City of Southlake
Taylor Olson Adkins Sralla Elam, L.L.P.
I-30 at Bryant Irvin Road
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2016-19041

Dear Ms. Russell:

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# 627780.

The City of Southlake (the "city"), which you represent, received a request for information pertaining to the city's red-light camera program or specified photograph enforcement program. The city claims the requested information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the claimed exception and reviewed the submitted information.

Initially, we note some of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2014-06894 (2014). In Open Records Letter No. 2014-06894, we determined, in part, the city must release some of the information at issue. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law. *See Gov't Code 552.007;*

¹We note the city initially raised sections 552.103, 552.104, 552.107, and 552.111 of the Government Code in its correspondence dated July 15, 2016, but only asserted section 552.103 is applicable to the information at issue in its correspondence dated July 22, 2016. Therefore, we presume the city no longer asserts sections 552.104, 552.107, and 552.111 are applicable to the requested information. *See Gov't Code §§ 552.301, .302.*

Open Records Decision Nos. 518 at 3 (1989), 400 at 2 (1983). Although the city now raises section 552.103, this section is a discretionary exception to disclosure that protects a governmental body's interests. *See 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 No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). As such, section 552.103 does not expressly prohibit the release of the submitted information or make the information confidential. Therefore, to the extent the city previously released any of the submitted information, the city may not now withhold any such information under section 552.103. To the extent the city did not previously release the submitted information to a member of the public, we will address its arguments against disclosure.

Next, we note the submitted information contains agendas of public meetings. The agendas of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See* Gov't Code §§ 551.041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). Although the city seeks to withhold this information under section 552.103, as a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the city must release the submitted agendas of the public meetings pursuant to sections 551.041 and 552.043 of the Government Code.

We also note some of the remaining information is subject to section 552.022 of the Government Code, which reads, in part, as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(1), (3). Although the city seeks to withhold this information under section 552.103, as noted above this section is discretionary and does not make information

confidential under the Act. See *Dallas Area Rapid Transit*, 4 S.W.3d at 475-76; ORD 542 at 4. Therefore, the city may not withhold the information subject to section 552.022, which we have marked, under section 552.103 but, instead, must release it.

The city asserts the remaining information is excepted from disclosure under section 552.103 of the Government Code, which provides, in part, 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). The governmental body has the burden of providing relevant facts and documents to show section 552.103 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 from disclosure under section 552.103(a).

The city informs us and provides documentation showing, prior to the city's receipt of the request for information, a lawsuit was brought against the city: *Watson v. City of Allen, et al*, No. 153-278080-15 (153rd Dist. Ct, Tarrant County, Tex., Apr. 23, 2015). Thus, we agree litigation was pending when the city received the request. Furthermore, upon review we find the remaining information is related to the pending proceedings for purposes of section 552.103. Therefore, the city may withhold the remaining information under section 552.103 of the Government Code.

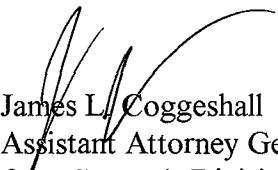
However, once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

To conclude, to the extent the city previously released any of the submitted information, the city must release such information to the requestor pursuant to section 552.007 of the Government Code. To the extent the submitted information is not subject to section 552.007 of the Government Code, the city must release the submitted agendas of the public meetings pursuant to sections 551.041 and 552.043 of the Government Code and the information we have marked under section 552.022 of the Government Code, but may withhold the remaining information under section 552.103 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bhf

Ref: ID# 627780

Enc. Submitted documents

c: Requestor
(w/o enclosures)