



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 1, 2016

Ms. Valecia R. Tizeno  
City Attorney  
City of Port Arthur  
P.O. Box 1089  
Port Arthur, Texas 77641-1089

OR2016-26636

Dear Ms. Tizeno:

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# 636164.

The Port Arthur Police Department (the "department") received a request for information pertaining to a specified lawsuit. The department claims the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

Initially, we note we have marked some of the submitted information as non-responsive. This information is not responsive to the present request because it was created after the date of the department's receipt of the request. This ruling does not address the public availability of non-responsive information, and the department is not required to release such information in response to this request.

Section 552.103 of the Government Code provides in relevant 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 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 from disclosure under section 552.103(a).

This office has stated a pending complaint with the Equal Employment Opportunity Commission (the “EEOC”) indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). The department states, and has provided documentation showing, prior to the department’s receipt of the request for information, a complaint was filed against the department with the EEOC. Based on these representations and our review of the submitted documents, we find the department has demonstrated it reasonably anticipated litigation when it received the request for information. We also find the department has established the responsive information is related to the anticipated litigation for purposes of section 552.103(a). Therefore, the department may withhold the responsive information under section 552.103(a) of the Government Code.

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



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 636164

Enc. Submitted documents

c: Requestor  
(w/o enclosures)