



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 28, 2016

Mr. Guillermo Trevino
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-28477

Dear Mr. Trevino:

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# 639698 (PIR NO. W055791).

The City of Fort Worth (the "city") received a request for nine categories of communications between named individuals and documents pertaining to specified topics. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ 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, the requestor contends the city failed to meet the procedural requirements of section 552.301(b) of the Government Code. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

wishes to withhold. *See id.* § 552.301(b). Pursuant to section 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* We note the city received the request for information on October 4, 2016. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. The envelope in which the city provided the information required by section 552.301(b) was meter-marked October 18, 2016, the tenth-business-day deadline. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the city complied with the procedural requirements mandated by section 552.301(b) of the Government Code.

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). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that (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. *See 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). *See* ORD 551.

This office has long held that for the purposes of section 552.103, "litigation" includes "contested cases" conducted in a quasi-judicial forum. *See* Open Records Decision Nos. 474 (1987), 368 (1983), 336 (1982), 301 (1982). In determining whether an administrative proceeding is conducted in a quasi-judicial forum, some of the factors this office considers are whether the administrative proceeding provides for discovery, evidence

to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See* Open Records Decision No. 588 (1991).

You state the submitted information relates to “a dispute resolution for a class action dispute step 1 grievance” as provided for by the city’s collective bargaining agreement (the “agreement”) between the city and the Fort Worth Police Officers Association (the “association”). You explain the agreement outlines a multi-step dispute resolution process governed by the Labor Rules of the American Arbitration Association (the “AAA”). Under the AAA’s Labor Rules, parties may be represented by counsel, witnesses may be required to testify under oath, an arbitrator authorized by law to subpoena witnesses and documents may do so and the arbitrator is the judge of the relevant and materiality of the evidence. Further, we note section 5 of the agreement states parties may request discovery from each other and if the opposing party does not comply with the discovery request, the requesting party may apply to the arbitrator, who shall order discovery consistent with the rules of discovery in Texas civil cases. Additionally, section 5 states the arbitrator’s decision is final and binding on the city and the association, and neither party may appeal the arbitrator’s decision to a court of law unless the arbitrator exceeds the scope of his or her jurisdiction or authority, the decision was procured by fraud or other unlawful means, or the decision is based on a clear and manifest error of law. Based on your representations and our review, we find the agreement’s procedure for disputes, as described above, is conducted in a quasi-judicial forum. Thus, the city’s administrative procedure for disputes as provided by the agreement constitutes litigation for purposes of section 552.103. You state the current grievance was pending at step 1 at the time the instant request was received. Thus, we determine the city was involved in pending litigation at the time it received the request for information. You also state the submitted information relates to the pending litigation against the city. Upon review of your arguments and the information at issue, we find the submitted information is related to litigation involving the city that was pending on the date the request was received. Accordingly, we find the city may withhold the submitted information under section 552.103 of the Government Code.²

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, 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).

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

A handwritten signature in cursive script that reads "Paige Lay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 639698

Enc. Submitted documents

c: Requestor
(w/o enclosures)