



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 17, 2017

Ms. Lauren Downey  
Assistant Attorney General  
Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2017-10672

Dear Ms. Downey:

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# 658454 (PIR Nos. 17-46238, 17-46284, 17-46286, 17-46294, and 17-46350).

The Office of the Attorney General (the "OAG") received five requests from four requestors for specified information pertaining to oil and gas facilities, named individuals, and a specified letter. The OAG states it will release some information to one of the requestors. The OAG claims the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.<sup>1</sup>

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

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<sup>1</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

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).

The OAG informs us, prior to the instant request, the OAG filed a lawsuit styled *Texas v. Environmental Protection Agency*, Cause 16-1257, in the United States Court of Appeals for the District of Columbia Circuit. Upon review, we find litigation involving the OAG was pending when it received the request for information. The OAG asserts, and we agree, the information it seeks to withhold relates to this litigation. Therefore, we agree section 552.103(a) is applicable to the submitted information. Accordingly, the OAG may withhold the submitted information under section 552.103(a) of the Government Code.

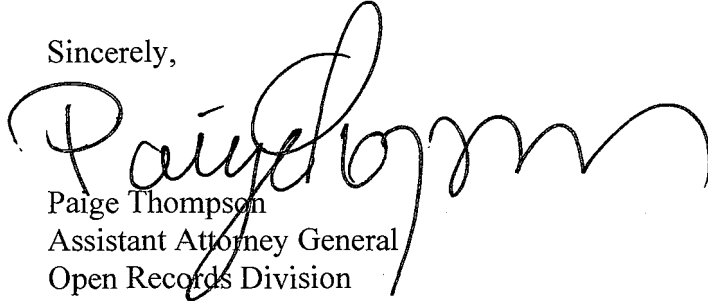
However, once the information has been obtained by all parties to the litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when litigation has concluded. Attorney General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

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/eb

Ref: ID# 658454

Enc. Submitted documents

c: 4 Requestors  
(w/o enclosures)