



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 24, 2017

Ms. Lisa Ruiz
Paralegal
City of Dallas
Mail Code - 1361
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2017-11389

Dear Ms. Ruiz:

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# 659174.

The City of Dallas (the "city") received a request for information pertaining to specified properties and information pertaining to communications between named individuals and specified entities during a specified time period. You state the city will release some information upon the payment of a cost estimate. 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).

Section 552.103 of the Government Code provides, in relevant part, as follows:

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 that those records contain substantially different types of information than that submitted to this office.

(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.

Id. § 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 city informs us, and provides documentation showing, prior to the instant request, the city filed a lawsuit styled *City of Dallas v. Topletz*, Cause No. DC-15-13993, in the 193rd Judicial District Court in Dallas County. Upon review, we find litigation involving the city was pending when it received the request for information. The city 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 city may withhold the submitted information under section 552.103(a) of the Government Code.²

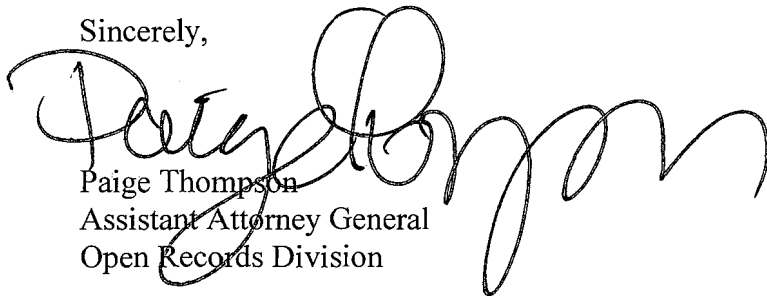
However, once the information has been obtained by all parties to the litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when litigation has concluded. Attorney General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

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

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", written over the typed name and title.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/tdw

Ref: ID# 659174

Enc. Submitted documents

c: Requestor
(w/o enclosures)