



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 26, 2017

Ms. Ashley L. White
Counsel for Town of Little Elm
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2017-16838

Dear Ms. White:

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# 668005.

The Town of Little Elm (the "town"), which you represent, received a request for information pertaining to the town's red light camera systems. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-05197 (2017). In that ruling, we determined, in part, the town must release the information we marked pursuant to section 552.022 of the Government Code and withhold the remaining information in Exhibit B under section 552.103 of the Government Code. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon, we conclude the town must continue to rely on Open Records Letter No. 2017-05197 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely

same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the prior ruling, we will address your arguments for the information not subject to the previous ruling.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) [T]he 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 [of the Government Code]; [and]

...

(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). Some of the submitted information contains completed reports subject to section 552.022(a)(1) and an executed contract relating to the receipt or expenditure of public funds subject to section 552.022(a)(3). Although the town seeks to withhold this information under section 552.103, 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; Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). Therefore, the town may not withhold the information subject to section 552.022, which we have marked, under section 552.103. As no other exceptions to disclosure are raised, the information we have marked must be released pursuant to sections 552.022(a)(1) and 552.022(a)(3) of the Government Code. However, we will consider your assertion of section 552.103 for the information not subject to section 552.022 of the Government Code.

Section 552.103 of the Government Code provides 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 the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (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. *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).

You contend the submitted information not subject to section 552.022 is related to pending litigation to which the town is a party. You inform us, and have provided documentation demonstrating, litigation styled *Watson v. City of Allen, et al.*, No. 153-278080-15, was pending in the 153rd Judicial District Court of Tarrant County, Texas on the date the town received the request. We note the town has submitted a copy of the Plaintiff's Sixth Amended Petition, which names the town as a defendant, and the petition was served on September 4, 2016. You further explain the submitted information will be at issue in the pending litigation. Based on your representations, the submitted documentation, and our review of the submitted information, we find litigation was pending when the town received this request for information, and we find the submitted information is related to the pending litigation for purposes of section 552.103. Therefore, the town may withhold the remaining information not subject to section 552.022 under section 552.103 of the Government Code.

We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. See ORD 551 at 4-5. Thus, if the opposing party has seen or had access to information relating to the pending litigation through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. See Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103 ends once the litigation concludes. See Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, we conclude the town must continue to rely on Open Records Letter No. 2017-05197 as a previous determination and withhold or release the identical information in accordance with that ruling. The town must release the information we have marked pursuant to sections 552.022(a)(1) and 552.022(a)(3) of the Government Code. The town 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,

A handwritten signature in black ink, appearing to read "D. Michelle Case", with a stylized flourish at the end.

D. Michelle Case
Attorney
Open Records Division

DMC/sdk

Ref: ID# 668005

Enc. Submitted documents

c: Requestor
(w/o enclosures)