



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 6, 2017

Ms. Megan Mahan
Assistant City Attorney
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053-4045

OR2017-20313

Dear Ms. Mahan:

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# 674392.

The City of Grand Prairie (the "city") received a request for information pertaining to a specified citation involving a barking dog. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 that the section 552.103(a) exception 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. *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 state the instant request for information relates to a pending criminal prosecution in the Grand Prairie Municipal Court involving the city's animal services department. You state the submitted information is related to the pending lawsuit. Based on your representations, the submitted documentation, and our review of the submitted information, we find litigation was pending when the city received this request for information, and the submitted information is related to the pending litigation for the purposes of section 552.103.

We note, however, the opposing party has seen or had access to the submitted citation. The purpose of section 552.103 of the Government Code is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to the litigation to obtain such information through discovery procedures. *See* ORD 551 at 4-5. Thus, 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. Open Records Decision Nos. 349 (1982), 320 (1982). Accordingly, the city may not withhold the marked citation which was seen by the opposing party under section 552.103 of the Government Code. However, the city may withhold the remaining information not seen by the opposing party under section 552.103 of the Government Code.¹ We note the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). As you raise no further exceptions, the remaining information must be released.

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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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 that reads "Patrick Mehaffy". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Patrick P. Mehaffy
Attorney
Open Records Division

PPM/gw

Ref: ID# 674392

Enc. Submitted documents

c: Requestor
(w/o enclosures)