



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

December 13, 2017

Mr. David V. Bryce  
Office of General Counsel  
Houston Housing Authority  
2640 Fountain View Drive, Suite 409  
Houston, Texas 77057

OR2017-28254

Dear Mr. Bryce:

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# 687843.

The Houston Housing Authority (the "authority") received a request for any reports the authority relied upon in making its determination to terminate the residential leases at a specified property. The authority claims the submitted information is excepted from disclosure under sections 552.103 and 552.104 of the Government Code.<sup>1</sup> We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note Exhibit 9 is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant 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[.]

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<sup>1</sup>We note the authority has withdrawn its claim it is not subject to the Act.

Gov't Code § 552.022(a)(1). Exhibit 9 is a completed report that is subject to section 552.022(a)(1). The authority must release Exhibit 9 pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* § 552.022(a)(1). The authority seeks to withhold Exhibit 9 under section 552.103 of the Government Code. However, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the authority may not withhold Exhibit 9 under section 552.103 of the Government Code. Accordingly, the authority must release Exhibit 9 pursuant to section 552.022(a)(1) of the Government Code.

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

(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). The governmental body claiming section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of 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 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

The authority states, and provides documentation showing, prior to its receipt of the instant request, a lawsuit styled *Castillo v. Memorial Drive Elderly, L.P.*, No. 2017-63022, was filed and is currently pending against the authority in the 333rd Judicial District Court of Harris

County, Texas. Therefore, we agree litigation was pending on the date the authority received the present request for information. The authority also states the information at issue pertains to the substance of the lawsuit claims. Based on the authority's representations and our review, we find the information at issue is related to the pending litigation. Therefore, we conclude the authority may withhold the remaining information under section 552.103 of the Government Code.<sup>2</sup>

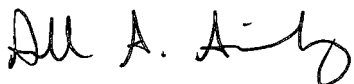
Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from 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 concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the authority must release Exhibit 9 pursuant to section 552.022(a)(1) of the Government Code. The authority 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](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,



Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/t dw

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<sup>2</sup>As our ruling is dispositive, we need not address the authority's remaining argument against disclosure of this information.

Ref: ID# 687843

Enc. Submitted documents

c: Requestor  
(w/o enclosures)