



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 5, 2018

Mr. Robert Maldonado
Counsel for City of Pleasanton
Maldonado Law Group, P.L.L.C.
310 South Saint Mary's Street Suite 1940
San Antonio, Texas 78205

OR2018-04950

Dear Mr. Maldonado:

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# 699101.

The City of Pleasanton (the "city"), which you represent, received a request for four specified categories of information, including certain hiring procedures and any document with the requestor's name. The city states it does not have some of the requested information.¹ The city claims the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note in regard to the portion of the request asking for any document with the requestor's name, the city states "[the requestor is] in possession of any incoming and return correspondence between himself and the [city]." However, the city did not submit any information pertaining to this portion of the request. We assume, to the extent this requested information existed when the city received the request for information, the city has released it to the requestor. If not, then the city must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *See generally Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

The city asserts the submitted information is excepted from release under section 552.103 of the Government Code, which 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 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.

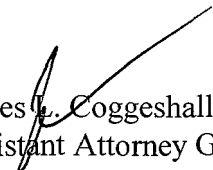
Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show section 552.103 is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental 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 litigation styled *Trevino v. Sanchez*, Cause No. 5:17-cv-01133-OLG, was pending against a city employee in his official capacity in the United States District Court for the Western District of Texas, when it received the request. Thus, we agree litigation was pending when the city received the request. However, we find the city has not established the submitted information is related to that pending proceeding for purposes of section 552.103. Therefore, the city may not withhold the submitted information under section 552.103 of the Government Code. Accordingly, the city must release 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tdw

Ref: ID# 699101

Enc. Submitted documents

c: Requestor
(w/o enclosures)