



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 31, 2019

Ms. Sunny Tripp
Assistant City Attorney
City of Dallas
1500 Marilla, 5DS
Dallas, Texas 75201

OR2019-14428

Dear Ms. Tripp:

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# 768369 (COD Ref. Nos. C001800, C001807, C001867, C002174, C002271, C002476, and C003422).

The City of Dallas (the "city") received seven requests for information pertaining to the handling of a specified animal and a specified lawsuit. The city states it will release some information to the requestors. The city claims 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 the city claims and reviewed the submitted representative sample of information.¹

Initially, the city states some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-13032 (2019). In that ruling, we determined the city (1) may withhold some information under section 552.103 of the Government Code, (2) must withhold some

¹We assume that 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.

information under section 552.137 of the Government Code, and (3) must release the remaining information pursuant to section 552.022(a)(3) of the Government Code in accordance with copyright law. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the city must rely on Open Records Letter No. 2019-13032 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 that information is or is not excepted from disclosure).

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).

The city states, and provides documentation showing, prior to the city's receipt of the instant request, an appeal styled *City of Dallas v. Dallas Pets Alive*, Cause No. 19-0128, was filed by the city and is currently pending in the Texas Supreme Court. The city states the remaining information is related to the pending lawsuit. Based on the city's representations, the submitted documentation, and our review of the information at issue, we find litigation

was pending when the city received these requests for information, and the information at issue is related to the pending litigation for the purposes of section 552.103. Therefore, the city may withhold the remaining information under section 552.103(a) of the Government Code.²

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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, 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).

In summary, the city must rely on Open Records Letter No. 2019-13032 as a previous determination and withhold or release the identical information in accordance with that ruling. The city 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/eb

²As our ruling is dispositive, we need not address the city's remaining arguments against disclosure of this information.

Ref: ID# 768369

Enc. Submitted documents

c: 7 Requestors
(w/o enclosures)