



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 4, 2019

Mr. Brad Bowman  
General Counsel  
Texas Department of Licensing and Regulation  
P.O. Box 12157  
Austin, Texas 78711

OR2019-14678

Dear Mr. Bowman:

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# 766854 (TDLR PIR# 20193647).

The Texas Department of Licensing and Regulation (the "department") received a request for all records pertaining to a specified case. The department states it released some information to the requestor. The department claims the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.111, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions the department claims 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 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). We note contested cases conducted under the Texas Administrative Procedure Act (the "APA"), chapter 2001 of the Government Code, are considered litigation for purposes of section 552.103 of the Government Code. See Open Records Decision No. 588 at 7 (1991).

The department states, prior to the receipt of the instant request, it opened an enforcement case relating to alleged violations of statutory and administrative rule violations by a tow truck operator and vehicle storage facility. The department explains the submitted information pertains to a pending contested case before the State Office of Administrative Hearings ("SOAH") under the APA. Based on the department's representations and our review, we find litigation was pending when the department received this request for information, and the submitted information is related to the pending litigation for the purposes of section 552.103. Accordingly, the department may withhold the submitted information under section 552.103 of the Government Code.<sup>1</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).

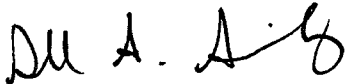
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>1</sup>As our ruling is dispositive, we need not address the department's remaining arguments against disclosure of the submitted information.

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,

A handwritten signature in black ink, appearing to read "Gerald A. Arismendez". The signature is written in a cursive style with a large initial "G" and "A".

Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/mo

Ref: ID# 766854

c: Requestor