



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 10, 2019

Mr. Andres Aguirre
City Secretary
City of Pleasanton
P.O. Box 209
Pleasanton, Texas 78064-0209

Mr. Bobby Maldonado
Counsel for the City of Pleasanton
Maldonado Law Group
310 South Saint Mary's Street, Suite 1710
San Antonio, Texas 78205

OR2019-15387

Dear Mr. Aguirre and 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# 769805.

The City of Pleasanton (the "city"), which you represent, received a request for all information regarding the termination of a named individual. You claim the submitted information is excepted from disclosure under sections 552.102, 552.103, and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

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

- (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). See ORD 551.

The city states, and provides documentation showing, prior to its receipt of the instant request, a lawsuit styled *Trevino v. City of Pleasanton*, Cause No. SA-18-CA-0688-DAE, was filed and is currently pending against the city in the United States District Court for the Western District of Texas. Therefore, we agree litigation was pending on the date the city received the instant request for information. The city also states the information at issue relates to the pending litigation. Based upon these representations and our review, we find the information at issue is related to the pending litigation. Accordingly, we conclude the city may withhold the submitted information under section 552.103(a) of the Government Code.¹

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 concluded. See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 at 3 (1982).

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this 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 M. Graham
Assistant Attorney General
Open Records Division

JMG/mo

Ref: ID# 769805

Enc. Submitted documents

c: Requestor
(w/o enclosures)