



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 21, 2019

Ms. Angelie Thomas  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2019-17063

Dear Ms. Thomas:

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# 771647 (GC Nos. 25861, 25862, 25863, 25864, 25865, 25866, and 25867).

The City of Houston (the "city") received seven requests from the same requestor for information pertaining to specified policies of Houston Public Library (the "library"); a list of library personnel involved in a specified library program; changes to a specified portion of the library's website; information pertaining to volunteers during a specified time period; and previous versions of the library's events webpage that existed during a specified time period.<sup>1</sup> You state the city will release some of the requested information. You claim the remaining requested information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup> We have also

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<sup>1</sup>We note the city states it wishes to withdraw its request for a ruling in regard to the first and second requests for information and indicates the responsive records will be released to the requestor. This ruling does not address the public availability of information the city no longer seeks to withhold.

<sup>2</sup>We assume 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.

received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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.

*Id.* § 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).

You state, and provide documentation showing, prior to the city's receipt of the instant requests, an appeal styled *Christopher, et. al v. Lawson, et. al*, Case No. 4:18-cv-3943, was filed against the city and is currently pending in the United States District Court for the Southern District of Texas, Houston Division. Based on your representations and our review, we find the city was a party to pending litigation at the time it received the instant requests. You also state the information at issue pertains to the substance of the lawsuit claims. Upon review, we find the information at issue is related to the pending litigation. Therefore, we conclude the city may withhold the submitted information under section 552.103 of the Government Code.<sup>3</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.

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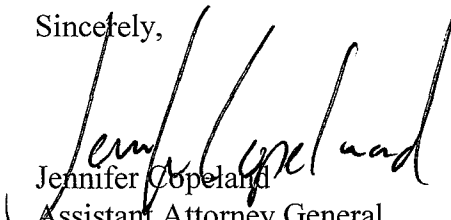
<sup>3</sup>As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

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.

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,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/gw

Ref: ID# 771647

Enc. Submitted documents

c: Requestor  
(w/o enclosures)