



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 9, 2019

Mr. John B. Strong  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102-6311

OR2019-18499

Dear Mr. Strong:

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# 773961 (Request No. W083914).

The City of Fort Worth (the "city") received a request for information pertaining to the requestor. The city states it released some information to the requestor. The city claims the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception the city claims and reviewed the submitted information.

Initially, we note some of the submitted information may have been the subject of a previous ruling from this office. In Open Records Letter No. 2019-14199 (2019), this office ruled that (1) the city must release the information seen by the opposing party and the information subject to section 552.022(a)(1) of the Government Code, and (2) the city may withhold the remaining information under section 552.103 of the Government Code. We have no indication the law, facts, or circumstances upon which the prior ruling was based have changed. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon, the city must continue to rely on Open Records Letter No. 2019-14199 as a previous determination and withhold or release the previously ruled

upon information in accordance with that ruling.<sup>1</sup> *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the prior ruling, we will consider the exception you raise.

Section 552.103 of the Government Code 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 the section 552.103(a) exception 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).

This office has long held that "litigation," for purposes of section 552.103, includes "contested cases" conducted in a quasi-judicial forum. *See* Open Records Decision Nos. 474 (1987), 368 (1983), 336 (1982), 301 (1982). In determining whether an administrative proceeding is conducted in a quasi-judicial forum, some of the factors this office considers are whether the administrative proceeding provides for discovery, evidence to be heard,

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<sup>1</sup>As we are able to make this determination, we need not address your argument against the disclosure of this information.

factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See* Open Records Decision No. 588 (1991).

The city indicates the submitted information relates to a pending termination appeal with the city's Human Resources Employee Relations Committee. The city indicates its administrative appeal process is adversarial in nature and includes the right of both sides to present evidence, cross-examine witnesses, and the right to representation. The city also indicates a record is made of the hearings. Based on the city's representations and our review, we find the city's termination appeal process, as described above, is conducted in a quasi-judicial forum and constitutes litigation for purposes of section 552.103. The city asserts the termination appeal at issue was pending at the time the instant request was received. Thus, we determine the city was involved in pending litigation at the time it received the request for information. The city asserts the submitted information relates to the pending litigation. Upon review, we agree the submitted information is related to the pending litigation. Accordingly, to the extent the submitted information is not identical to the information previously requested and ruled upon in Open Records Letter No. 2019-14199, the city may withhold the submitted information under section 552.103 of the Government Code.

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, to the extent the submitted information is identical to the information previously requested and ruled upon in Open Records Letter No. 2019-14199, the city must continue to rely on this previous determination and withhold or release the previously ruled upon information in accordance with the previous ruling. To the extent the submitted information is not identical to the information previously requested and ruled upon in Open Records Letter No. 2019-14199, the city may withhold the submitted 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,

A handwritten signature in black ink, appearing to read "Patrick P. Mehaffy", with a long horizontal flourish extending to the right.

Patrick P. Mehaffy  
Assistant Attorney General  
Open Records Division

PPM/be

Ref: ID# 773961

Enc. Submitted documents

c: Requestor  
(w/o enclosures)