



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 12, 2019

Mr. Aaron I. Vela
Counsel for the Edinburg Economic Development Corporation
Law Office of Aaron I. Vela, P.C.
200 East Cano
Edinburg, Texas 78539

OR2019-22229

Dear Mr. Vela:

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# 779947.

The Edinburg Economic Development Corporation (the "corporation"), which you represent, received a request for all e-mails between the Edinburg city manager and a named individual during a specified time period. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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

(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 for providing relevant facts and documents to show section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that (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). The governmental body must meet both parts of this test for information to be excepted from disclosure under section 552.103(a). See ORD 551 at 4.

You assert the submitted information is related to pending litigation to which the corporation is a party. You state, and provide documentation demonstrating, a lawsuit styled *Edinburg Econ. Development Corp. v. Garcia, et al.*, Case No. CL-18-6379-F, was pending in the County Court at Law No. 6 of Hidalgo County, Texas, upon receipt of the present request for information. You state the information at issue relates to the pending litigation because it pertains to the details of the allegations which are the subject of the pending suit against the corporation. Based on your representations and our review, we find the corporation was a party to pending litigation at the time it received the present request and the information at issue is related to the pending litigation for purposes of section 552.103. Accordingly, the corporation 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 concluded. See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 at 3 (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](#), 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 cursive script that reads "Kimbell Kesling". The signature is written in black ink and is positioned above the typed name.

Kimbell Kesling
Attorney
Open Records Division

KK/eb

Ref: ID# 779947

Enc. Submitted documents

c: Requestor
(w/o enclosures)