



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

October 2, 2019

Mr. Chris Kadas  
Attorney  
Texas Parks and Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744-3291

OR2019-27544

Dear Mr. Kadas:

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# 788855 (ORR No. 2019-07-R46).

The Texas Parks and Wildlife Department (the "department") received a request for certain employment records pertaining to the requestor's client during specified time periods, including telephone records and Family Medical Leave Act information. You state the department will release some information. 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 representative sample of information.<sup>1</sup>

Section 552.103 of the Government Code provides, in relevant 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.

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<sup>1</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.

...

(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 that the section 552.103(a) exception applies 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 requested information is related to that litigation. *See 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 under section 552.103(a). *See* ORD 551 at 4. This office has stated a pending complaint with the Equal Employment Opportunity Commission (the "EEOC") indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982).

The department states, and provides documentation demonstrating, prior to the department's receipt of the request for information, the requestor's client filed a complaint of discrimination against the department with the EEOC. The department explains the EEOC dismissed the charge, but issued a notice of complainant's right to sue within a 90-day period. We note on the date the department received the instant request for information, the 90-day period to file suit had not run. Based on these representations and our review of the submitted documents, we find the department has demonstrated it reasonably anticipated litigation when it received the request for information. We also find the department has established the submitted information is related to the anticipated litigation for purposes of section 552.103(a). Therefore, the department may withhold the submitted information under section 552.103(a) of the Government Code.

However, once the information has been obtained by all parties to the litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/jxd

Ref: ID# 788855

Enc. Submitted documents

c: Requestor  
(w/o enclosures)