



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

October 7, 2019

Ms. Marie N. Johnson  
Counsel for the Town of Lakewood Village  
Messer Fort McDonald  
6371 Preston Road, Suite 200  
Frisco, Texas 75034

OR2019-27944

Dear Ms. Johnson:

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# 789778 (ORR ID # LV061919JA).

The Town of Lakewood Village (the "town"), which you represent, received a request for five categories of information pertaining to the town and a specified location. You state a portion of the requested information is available on the town's website. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, you state the town sought clarification from the requestor for portions of the request for information. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear

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<sup>1</sup> We note although you raise section 552.101 of the Government Code, you make no arguments to support this assertion. Therefore, we assume you have withdrawn your claim that this exception applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

<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.

or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You state the town has not received a response from the requestor for a portion of the request. Thus, for the portion of the request for which you have sought but not received clarification, we find the town is not required to release information in response to this portion of the request. However, if the requestor clarifies this portion of the request for information, the town must seek a ruling from this office before withholding any responsive information from the requestor. See Gov't Code 552.222; *City of Dallas*, 304 S.W.3d at 387. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990).

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.

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).

You assert Exhibit 2 is excepted from disclosure under section 552.103. You state, and provide documentation showing, on the same date the town received the instant request, the requestor sent the town a notice of claim letter appealing a decision by the town pertaining to violations of town ordinances by the requestor's client. In his letter, the requestor demanded an oral hearing with the right to present evidence and cross examine witnesses. Based on your representations, our review of the submitted information, and the totality of the circumstances, we find the town reasonably anticipated litigation on the date the request was received. You also represent the information at issue is related to the anticipated

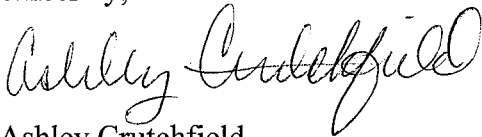
litigation for purposes of section 552.103. Accordingly, the town may withhold Exhibit 2 under section 552.103 of the Government Code.<sup>3</sup>

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. 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).

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,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/be

Ref: ID# 789778

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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