



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 24, 2019

Ms. Alia Vinson
Attorney for the West Harris County Regional Water Authority
Allen Boone Humphries Robinson, LLP
Phoenix Tower
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027

OR2019-30119

Dear Ms. Vinson:

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# 791616.

The West Harris County Regional Water Authority (the "authority"), which you represent, received a request for three categories of information pertaining to a specified project. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. You also indicate you notified the City of Houston (the "city") of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the city. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

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

¹ We assume that 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.

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).

The city states, and provides documentation showing, a lawsuit styled *Hatch Associates Consultants, Inc. v. City of Houston et al*, Cause No. 2019-49987, was pending against the city in the 269th Judicial District Court of Harris County, Texas, when the authority received the instant request for information. We note, however, the authority is not a party to the pending case and, thus, does not have a litigation interest in the case for purposes of section 552.103. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (statutory predecessor to section 552.103 only applies when governmental body is party to litigation). In such a situation, we require an affirmative representation from the governmental body with the litigation interest that it wants the information at issue withheld from disclosure under section 552.103. The city objects to the release of the submitted information pursuant to section 552.103. The authority and the city state the submitted information is related to the pending lawsuit. Based on these representations, the submitted documentation, and our review of the submitted information, we find litigation was pending when the authority received this request for information, and the submitted information is related to the pending litigation for the purposes of section 552.103. Therefore, the authority may withhold the submitted information under section 552.103(a) of the Government Code on behalf of the city.²

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,

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/eb

Ref: ID# 791616

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)