



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 6, 2019

Ms. Marie N. Johnson
Counsel for the City of Argyle
Messer, Fort & McDonald
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2019-34321

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# 802412 (ORR# 2019-129).

The Town of Argyle (the "town"), which you represent, received a request for communications between four named individuals or any other town attorneys during a specified time period. The town claims the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code.¹ We have considered the exceptions the town claims and reviewed the submitted information.

Initially, the town indicates some of the submitted information, which it marked, is not responsive to the instant request for information because it does not pertain to the named individual. This ruling does not address the public availability of any information that is not responsive to the request and the town is not required to release such information in response to this request.

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

¹ Although the town also raises section 552.101 of the Government Code, the town has not provided any arguments to support this exception. See Gov't Code §§ 552.301, .302.

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).

The town states, and provides documentation showing, a lawsuit styled *Ronald Schmidt v. Marla Hawksworth*, Case No. 4:19-CV-00688, had been filed against the town and was pending against the town in the United States District Court for the Eastern District of Texas, Sherman Division, when the town received the request for information. Therefore, we agree litigation was pending when the town received the request. We also find the town has established the submitted information is related to the pending litigation for purposes of section 552.103(a). Therefore, the town may withhold the submitted information under section 552.103(a) of the Government Code.²

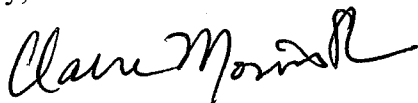
However, once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney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

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

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jxd

Ref: ID# 802412

Enc. Submitted documents

c: Requestor
(w/o enclosures)