



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 4, 2020

Ms. Rebecca S. Hayward  
Counsel for the City of Alice  
Denton Navarro Rocha Bernal & Zech P.C.  
701 East Harrison, Suite 100  
Harlingen, Texas 78550-9165

OR2020-03247

Dear Ms. Hayward:

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# 810456.

The City of Alice (the "city"), which you represent, received a request for 1) electronic correspondence between named individuals and 2) police reports involving named individuals. You state you have released basic information to the requestor. *See* Gov't Code § 552.108(c) (basic information about an arrest, arrested person, or crime not excepted from disclosure under section 552.108). 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:

(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> This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

(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 claiming section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information, and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

You state, and provide documentation showing, prior to the city's receipt of the instant request, a lawsuit styled *Alice Police Officers' Association v. City of Alice*, Civil Case No. 19-07-59667-CV, was filed and is currently pending against the city in the 79<sup>th</sup> Judicial District Court of Jim Wells County, Texas. Therefore, we agree litigation was pending on the date the city received the present request for information. You also state the submitted information pertains to the substance of the lawsuit claims. Based on your representations and our review, we find the submitted information is related to the pending litigation. Therefore, we conclude the city 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. *See Open Records Decision Nos. 349 (1982), 320 (1982).* Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and 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 (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,

A handwritten signature in black ink, appearing to read "Michelle Garza", with a long horizontal flourish extending to the right.

Michelle Garza  
Assistant Attorney General  
Open Records Division

MG/mo

Ref: ID# 810456

Enc. Submitted documents

c: Requestor  
(w/o enclosures)