



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 11, 2020

Mr. J. Eric Magee
Counsel for Webb County
Allison, Bass & Magee, L.L.P.
402 West 12th Street
Austin, Texas 78701

OR2020-04148

Dear Mr. Magee:

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# 811639.

Webb County (the "county"), which you represent, received a request for all communications with the Federal Emergency Management Association during a specified time period pertaining to a specified case and subsequent appeals. 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 information.

Section 552.103 of the Government Code provides:

(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 this burden is a showing that (1) litigation was pending or reasonably anticipated on the date of the receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *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). We noted contested cases under the Administrative Procedure Act (the “APA”) are considered litigation for purposes of section 552.103. *See* Open Records Decision No. 588 (1991) (contested cases under APA constituted litigation for purposes of statutory predecessor to Gov't Code § 552.103). We further note a contested case before the State Office of Administrative Hearings (“SOAH”) is considered litigation for purposes of the APA. *See id.*

You assert the submitted information pertains to pending litigation involving the county. You explain the information at issue pertains to a permit application pending with the Texas Commission on Environmental Quality (“TCEQ”). You state, and provide documentation showing, a hearing at SOAH was pending when the county received the instant request and, thus, assert litigation was pending before SOAH and TCEQ. You also inform us the county is a party to the proceeding at issue. Based upon your representations and our review, we find litigation was pending on the date the county received the request for information. Furthermore, we agree the information at issue relates to the pending litigation. Therefore, the county may withhold the submitted information under section 552.103 of the Government Code.

However, we note, once information has been obtained by all parties to the litigation through discovery otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information either obtained from or provided to the opposing parties in 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 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,

A handwritten signature in black ink that reads "Kimbell Kesling". The signature is written in a cursive style with a long, sweeping horizontal stroke at the end.

Kimbell Kesling
Attorney
Open Records Division

KK/be

Ref: ID# 811639

Enc. Submitted documents

c: Requestor
(w/o enclosures)