



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 11, 2020

Mr. Michael L. Martin
Counsel for the City of Canton
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2020-07762

Dear Mr. Martin:

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# 816035.

The City of Canton (the "city"), which you represent, received two requests from the same requestor for specified residential occupancy permits and information related to a named city employee. You state the city does not maintain a portion of the requested information.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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

¹ The Act does not require a governmental body to create or release information that did not exist when a request for information was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 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, prior to the city's receipt of the instant requests, a lawsuit styled *New Beginnings Houston v. Cluck*, cause number 6:19-CV-00177-JDK, was pending against the city in the United States District Court for the Eastern District of Texas, Tyler Division. In addition, you state a lawsuit styled *City of Canton v. New Beginnings Fellowship Church*, cause number 19-00185, was also pending in the in the 249th District Court of Van Zandt County before the city received the instant requests. Therefore, we agree litigation was pending on the date the city received the present requests for information. You also state the information at issue pertains to the substance of the lawsuits' claims. Based on these representations and our review, we find the information at issue is related to the pending litigation. Therefore, we conclude the city may withhold the submitted information under section 552.103 of the Government Code.²

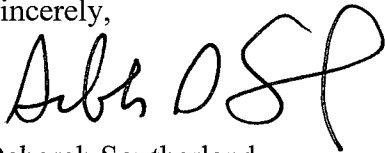
Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See Open Records Decision Nos. 349 (1982), 320 (1982).* Thus, information that has either been obtained from 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 been concluded. *See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 (1982).*

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

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 "Deborah Southerland". The signature is fluid and cursive, with the first name "Deborah" written in a larger, more prominent script than the last name "Southerland".

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/gw

Ref: ID# 816035

Enc. Submitted documents

c: Requestor
(w/o enclosures)