



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 29, 2020

Mr. Scott Lemond  
General Counsel  
Harris County Housing Authority  
8933 Interchange  
Houston, Texas 77054

OR2020-16678

Dear Mr. Lemond:

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# 833310.

The Harris County Housing Authority (the "authority") received a request for the authority's client file pertaining to the requestor's client. 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.

Initially, we note portions of the submitted information are subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

[T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(1), (3). Some of the submitted information, which we marked, consists of completed inspection reports subject to section 552.022(a)(1) of the Government Code. The completed reports must be released pursuant to section 552.022(a)(1) unless

they are excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). The information at issue also contains information in an account or contract relating to the expenditure of funds by a governmental body subject to section 552.022(a)(3) of the Government Code. The information subject to section 552.022(a)(3), which we marked, must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(3). Although you raise section 552.103 of the Government Code for the entirety of the submitted information, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the authority may not withhold any portion of the information subject to sections 552.022(a)(1) and 552.022(a)(3) of the Government Code, which we marked, under section 552.103 of the Government Code. As you raise no further exceptions to disclosure of the information at issue, the authority must release the information we marked under section 552.022 of the Government Code. However, we will consider your argument under section 552.103 for the remaining information, which is not subject to section 552.022.

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.

...

(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 demonstrating, prior to the authority's receipt of the instant request, the requestor filed a lawsuit styled *Pedroza v. Harris County Housing*

*Authority, et al.*, Cause No. 2020-19655, which is currently pending against the authority in the 11th District Court of Harris County, Texas. Therefore, we agree litigation was pending on the date the authority received the present request for information. You also state the information at issue pertains to the substance of the lawsuit. Based on these representations and our review, we find the remaining information is related to the pending litigation. Therefore, we conclude the authority may withhold the remaining 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 been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the authority must release the information we marked under section 552.022 of the Government Code. The authority may withhold the remaining information under section 552.103 of the Government Code.

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,

Matthew Taylor  
Assistant Attorney General  
Open Records Division

MT/be

Ref: ID# 833310

Enc. Submitted documents

c: Requestor  
(w/o enclosures)