



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2020

Mr. Joseph G. Hays
Ms. Rebekah Wendt
Assistant City Attorneys
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2020-16806

Dear Mr. Hays and Ms. Wendt:

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# 834556 (GC Nos. 26646, 26647, 26659, and 26677).

The City of Houston (the "city") received four requests from different requestors for certain information pertaining to a specified incident. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. Additionally, the city states, and provides documentation showing, it notified the United States Department of Justice Bureau of Alcohol, Tobacco, Firearms, and Explosives (the "bureau") of its right to submit comments to this office explaining why the submitted information should not be released.¹ *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also received and considered comments submitted by an interested third party. *See id.*

Section 552.103 of the Government Code provides, in part, the following:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the

¹ As of the date of this letter, this office has not received comments from the bureau explaining why any portion of the submitted information should not be released.

² We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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.

Id. § 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 meeting this burden is a showing (1) litigation was 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551.

The city states, and provides documentation showing, a lawsuit styled *Flores v. City of Houston*, Cause No. 2020-06-315, was pending against the city in the Judicial District Court of Harris County prior to the date the city received the instant requests for information. The city explains the submitted information is related to the subject matter of the pending lawsuit. Based upon these representations, the submitted documentation, and our review of the information at issue, we find litigation was pending when the city received the instant requests for information, and the information at issue is related to the pending litigation for the purposes of section 552.103. Accordingly, the city may withhold the submitted information under section 552.103(a) of the Government Code.³

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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it 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 at 3 (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.

³ As our ruling is dispositive, we need not address the remaining argument against disclosure of this 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/rm

Ref: ID# 834566

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

cc: Third Party
(w/o enclosures)