



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 17, 2022

Mr. Lance Vanzant
Counsel for the City of Celina
Hayes Berry White Vanzant
512 West Hickory Street, Suite 100
Denton, Texas 76201

OR2022-07813

Dear Mr. Vanzant:

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# 936569.

The City of Celina (the "city"), which you represent, received a request for seven categories of information pertaining to the requestor's client and five categories of information pertaining to two other named individuals. You state the city will redact certain motor vehicle record information under section 552.130(c) of the Government Code, social security numbers under section 552.147(b) of the Government Code, and certain information pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.1315, 552.114, 552.115, 552.117, 552.1175, 552.119, 552.122, and 552.140 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information, including W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, without the necessity of requesting an attorney general decision.

² We note the city did not comply with section 552.301 of the Government Code in raising sections 552.1315, 552.114, and 552.115. *See* Gov't Code § 552.301(b). Nonetheless, because sections 552.1315, 552.114, and 552.115 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider the applicability of these exceptions to the submitted information. *See id.* §§ 552.007, .302, .352.

³ We assume that 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
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Section 552.103 of the Government Code provides, in relevant part, as follows:

(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 section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that (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. *See 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.

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish litigation is reasonably anticipated, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *Id.* This office has stated a pending complaint with the Equal Employment Opportunity Commission (the "EEOC") indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982).

You state, and provide documentation showing, prior to the city's receipt of the instant request for information, the requestor filed a discrimination claim against the city with the EEOC. You state the submitted information is directly related to the anticipated litigation. Based on your representations and our review of the information at issue, we find the city reasonably anticipated litigation on the date this request was received. Therefore, the city may withhold the submitted information under section 552.103 of the Government Code.⁴

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.

⁴ As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 anticipated 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 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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/jm

Ref: ID# 936569

Enc. Submitted documents

c: Requestor
(w/o enclosures)