



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 3, 2022

Mr. Ariel San Miguel  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-368

OR2022-30400

Dear Mr. San Miguel:

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# 976058 (Reference No. R074921).

The City of Houston (the "city") received a request for ten categories of information pertaining to a specified contract. We understand the city will release some of the requested information. You state some of the requested information was the subject of a previous ruling by this office. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. You also state release of some of the submitted information may implicate the proprietary interests of a third party. Accordingly, you state, and provide documentation showing, you notified Collette Holt & Associates ("CHA") of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered your arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from CHA explaining why its information should not be released. Therefore, we have no basis to

conclude CHA has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the city may not withhold any of the information at issue on the basis of any proprietary interest CHA may have in it.

Next, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2022-12734 (2022). In that ruling, we concluded the city may withhold certain information under section 552.111 of the Government Code; the city must withhold the certain 1040 forms and their respective attachments under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; and the city must release the remaining information. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the city must continue to rely on Open Records Letter No. 2022-12734 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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:

(a) [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). The information we have marked consists of completed reports subject to section 552.022(a)(1). The city must release the completed reports 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). Portions of the remaining information also consist of information in an account, voucher, or contract relating to the expenditure of funds by a governmental body subject to section 552.022(a)(3). The information subject to section 552.022(a)(3), which we have 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 city may not withhold the information subject to section 552.022, which we have marked, under section 552.103 of the Government Code. As no further exceptions to disclosure have been raised, the city must release the information we have marked pursuant to section 552.022 of the Government Code. However, we will address your argument under section 552.103 of the Government Code for the information not subject to section 552.022 of the Government Code.

Section 552.103 of the Government Code provides, in 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). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation is pending or reasonably anticipated on the date the governmental body receives the request for information, and (2) the information at issue is related to the pending or anticipated litigation. *See 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). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See* ORD 551 at 4.

This office has long held that for the purposes of section 552.103, "litigation" includes "contested cases" conducted in a quasi-judicial forum. *See* Open Records Decision Nos. 474 (1987), 368 (1983), 336 (1982), 301 (1982). Likewise, "contested cases" conducted under the Texas Administrative Procedure Act (the "APA"), chapter 2001 of the Government Code, constitute "litigation" for purposes of section 552.103. *See* Open Records Decision Nos. 588 (1991) (concerning former State Board of Insurance proceeding), 301 (concerning hearing before Public Utilities Commission). In determining

whether an administrative proceeding is conducted in a quasi-judicial forum, some of the factors this office considers are whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See* ORD 588.

The city states prior to its receipt of the instant request for information, the requestor filed a grievance with the city requesting an administrative review of the city's Office of Business Opportunity's ("OBO") determination to grant a request from a city contractor to deviate from a certain contract. The city explains under Section D of the city's OBO Policies and Procedures, failing an informal resolution and after the city receives written notice from an aggrieved person, an impartial individual or body is selected by the mayor or designee and presides over an impartial hearing of the grievance. The city asserts such hearings are "litigation" in that the city follows administrative procedures in handling such disputes. The city further explains the impartial hearing requires a record be made through video, transcription, or other technical means; authorizes the hearing officer to identify interested parties to be notified of the impartial hearing; allows interested parties to present evidence and participate as witnesses and receive testimony evidence; and permits interested parties to be represented by a licensed attorney. You inform us the city has received written notice from the requestor for an impartial hearing, and the city has engaged an impartial hearing individual to preside over the impartial hearing and is in the process of scheduling a hearing date. Based on your representations and our review, we find you have demonstrated the impartial hearing at issue will be conducted in a quasi-judicial forum and, thus, constitutes litigation for purposes of section 552.103. Thus, we determine the city was involved in pending litigation at the time it received the instant request. You state the remaining information directly relates to the subject of this pending litigation. Based on your representations and our review, we find the information at issue is related to the pending litigation. Therefore, we conclude the city 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 anticipated 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 concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the city must continue to rely on Open Records Letter No. 2022-12734 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. The city must release the information we have marked pursuant to section 552.022 of the Government Code. The city 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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/pt

Ref: ID# 976058

Enc. Submitted documents

c: Requestor  
(w/o enclosures)