



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2013

Ms. Linda Pemberton
Paralegal
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2013-16607

Dear Ms. Pemberton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 501622 (ID# W011255).

The City of Killeen (the "city") received a request for the statements the requestor's client may have made concerning the July 11, 2013 incident at the splash pad at the Long Branch Park. The city asserts the information is excepted from disclosure under section 552.103 of the Government Code. We have considered the city's claimed exception and have reviewed the submitted information.

First, we note the park employee's statement is not responsive to the request for the statements of the requestor's client. This decision does not address the non-responsive information.

Section 552.103, the litigation exception, 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). The city has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in this particular situation. The test for meeting this burden is a showing (1) litigation is pending or reasonably anticipated on the date that request for information is received, 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). The city must meet both prongs of this test for information to be excepted under section 552.103(a). 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 party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed.

Here, the city asserts it reasonably anticipated litigation based on its receipt of a letter from an attorney who represents a child who allegedly suffered injuries while playing at the park. We need not determine whether the city reasonably anticipated litigation in this instance because even if it did, the opposing party in such litigation provided the statement at issue, and thus, has had access to the information. Accordingly, the city may not withhold the requested statement pursuant to section 552.103. The city must release the requested statement.

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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', written in a cursive style.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/som

Ref: ID# 501622

Enc: Submitted documents

c: Requestor
(w/o enclosures)