



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2014

Ms. Thao La
Senior Attorney
Parkland Health and Hospital System
5201 Harry Hines Boulevard
Dallas, Texas 75235

OR2014-05383

Dear Ms. La:

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# 518374.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district") received a request for five categories of information pertaining to a specified contract, including: (1) the request for proposals or request for qualifications that resulted in the specified contract, (2) the score sheets and selection memoranda that were used to evaluate KPMG and other candidates, (3) the specified contract, (4) the task orders presented by the district to KPMG, and (5) any draft reports prepared by KPMG or presented to the Parkland Board of Managers relating to any task order accomplished by KPMG in connection with the specified contract.¹ You claim the submitted information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹You state the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Initially, you state Exhibit C-4 was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-18399 (2013). In that ruling, we determined the district may withhold the draft document at issue under section 552.111 of the Government Code, to the extent the draft document would be released to the public in its final form. To the extent the draft document would not be released to the public in its final form, we determined the district may withhold the information we marked under section 552.111. Finally, we ruled the district must comply with copyright law. You state the draft report at issue is still pending and has not yet been released to the public in its final form. Additionally, you state the law, facts, and circumstances on which the prior ruling was based have not changed for the requested draft document. Based on your representations, we conclude the district may rely on Open Records Letter No. 2013-18399 as a previous determination and withhold or release the identical information in accordance with that ruling.² *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 will address your arguments against disclosure for the submitted information that has not been previously ruled on by this office.

Next, we note a portion of the remaining information is 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:

...

(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)(3). Exhibit C-1 is a contract subject to subsection 552.022(a)(3), which must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(3). You seek to withhold the information subject to section 552.022 under section 552.103 of the Government Code. However, section 552.103 is a discretionary exception 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); *see also* Open Records Decision

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, Exhibit C-1 may not be withheld under section 552.103 of the Government Code. However, we will consider your argument under section 552.103 for the remaining information.

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). 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 at 4.

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.* Concrete evidence to support a claim litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. *See* Open Records Decision No. 555 (1990); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an

attorney who makes a request for information does not establish litigation is reasonably anticipated. *See* Open Records Decision No. 361 (1983).

You state prior to the date the district received the instant request for information, the requestor, a former district employee, was involuntarily terminated from his position as the Director of Facilities Contracts and Administration with the district. You also state, and provide documentation showing, the requestor expressed disagreement with his involuntary termination, and indicated he intended to seek reinstatement or resignation. You state the district received correspondence from an attorney for the requestor informing the district the attorney had been retained to represent the requestor. Additionally, you state, and provide documentation showing, the requestor's attorney filed a *Verified Petition to Take Deposition Before Suit* in cause no. DC-13-15335 prior to receipt of the instant request. Thus, we find the district anticipated litigation prior to receipt of the instant request. Finally, you state the requested information relates to the requestor's former job duties, and the requested information is central to the requestor's termination and related litigation. Based on your representations, we find you have demonstrated the remaining information is related to litigation reasonably anticipated at the time the district received the request for information. Therefore, we find the district 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 been concluded or is no longer anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the district may rely on Open Records Letter No. 2013-18399 as a previous determination for Exhibit C-4 and withhold or release it in accordance with that ruling. The district must release Exhibit C-1 under section 552.022(a)(3) of the Government Code. The district 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 <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 "Lee Seidlits", written in a cursive style.

Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/tch

Ref: ID# 518374

Enc. Submitted documents

c: Requestor
(w/o enclosures)