



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 3, 2014

Mr. Jeffrey Giles
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2014-05540

Dear Mr. Giles:

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# 518573 (City GC No. 21110).

The City of Houston (the "city") received a request for a copy of the proposals submitted to the city for the current Emergency Medical Services billing and collections contract and any scoring or other information used in determining the final award. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you inform us you have notified Apollo Health Street, Inc. ("Apollo") and MED3000, Inc. of the request for information and of each company's 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 Act in certain circumstances). We have received comments from Apollo. We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us some of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2013-17787 (2013) and 2013-18280 (2013). In both those rulings, we determined the city may withhold the information at issue under section 552.103 of the Government Code. You state the law, facts, and circumstances on which the prior rulings were based have not

changed. Accordingly, to the extent the information responsive to the current request is identical to the information previously requested and ruled upon by this office, we conclude the city may continue to rely on Open Records Letter Nos. 2013-17787 and 2013-18280 as previous determinations and withhold the information in accordance with those rulings.¹ 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). To the extent the submitted information is not subject to Open Records Letter Nos. 2013-17787 and 2013-18280, we will address your arguments against disclosure.

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 at issue. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of 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 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. See Open Records Decision No. 551 at 4 (1990).

You state, and provide documentation showing, that prior to the city's receipt of the present request for information, the city filed a lawsuit against the city's Emergency Medical Services Ambulance Fee Billing and Collection Services vendor. You state this litigation

¹As our ruling is dispositive, we need not address your argument against disclosure of this information.

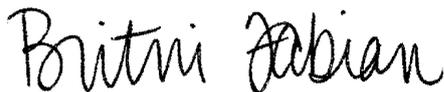
is currently pending and alleges, among other things, breach of contract by the vendor. You also state the information at issue is related to the pending litigation and forms the basis for the pending lawsuit. Based on your representation and our review, we find the information at issue is related to the pending litigation. Therefore, we conclude the city may withhold the submitted information under section 552.103 of the Government Code.²

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 pending 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. *See* Attorney General Opinion MW-575 (1982); *see also* 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 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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/tch

Ref: ID# 518573

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address Apollo's arguments against disclosure.

Ms. Constance A. Wilkinson
Counsel for Apollo
Epstein, Becker and Green, P.C.
1227 25th Street, NW, Suite 700
Washington, D.C. 20037
(w/o enclosures)

Mr. Morris Maybruch
EMS Vice President
MED 3000
3131 Newmark Drive, Suite 100
Miamisburg, Ohio 45342
(w/o enclosures)