



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2014

Ms. Evelyn W. Kimeu
Staff Attorney
City of Houston Police Department
1200 Travis
Houston, Texas 77002-6000

OR2014-09105

Dear Ms. Kimeu:

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# 526058 (HPD ORU No. 14-1989).

The Houston Police Department (the "department") received two requests from the same requestor for information pertaining to the Safe Clear program.¹ The department states it will release some of the requested information, but claims the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.²

Initially, you inform us Exhibit 3 was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-15688 (2013). In Open Records Letter No. 2013-15688, we determined the department may withhold Exhibit 3 under section 552.103 of the Government Code. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, the

¹The department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (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) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

²We assume 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 letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

department may continue to rely on Open Records Letter No. 2013-15688 as a previous determination and withhold Exhibit 3 in accordance with that ruling. We will address your arguments against the release of Exhibit 2, which is not encompassed by Open Records Letter No. 2013-15688.

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). The governmental body has the burden of providing relevant facts and documents to show section 552.103 is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is 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. *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 governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

You inform us, and provide documentation showing, prior to the department's receipt of the requests for information a lawsuit styled *Houston Professional Towing Association v. The City of Houston, Texas*, Case No. 4:12-CV-00056, was pending in the United States District Court for the Southern District of Texas. However, the department is not a party to the pending lawsuit. Therefore, the department does not have a litigation interest in the matter for purposes of section 552.103. See Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (predecessor to section 552.103 only applies when governmental body is party to litigation). In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. You have submitted an affidavit from an attorney for the City of Houston (the "city") who requests the information at issue be withheld under section 552.103. The city asserts the lawsuit was pending on the date the department received the requests, and the information at issue is

related to the pending lawsuit. Based on these representations and our review, we agree litigation was pending on the date the department received the requests and the information at issue relates to this litigation. Therefore, the department may withhold Exhibit 2 under section 552.103 of the Government Code on behalf of the city.

We note, however, once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

To conclude, the department may continue to rely on Open Records Letter No. 2013-15688 as a previous determination and withhold Exhibit 3 in accordance with that ruling. The department may withhold Exhibit 2 under section 552.103 of the Government Code on behalf of the city.

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 526058

Enc. Submitted documents

c: Requestor
(w/o enclosures)