



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2014

Mr. Leonard V. Schneider
Counsel for the City of Huntsville
Liles Parker, P.L.L.C.
800 Rockmead Drive, Suite 165
Kingwood, Texas 77339

OR2014-18219

Dear Mr. Schneider:

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# 539041.

The City of Huntsville (the "city"), which you represent, received a request for the (1) number/percentage of claims submitted to the Texas Municipal League, (2) number/percentage of claims repaired/paid, and (3) number/percentage of claims denied. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, you assert the request requires the city to answer questions asked by the requestor. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). As you have submitted responsive information, we will address your argument under section 552.103 of the Government Code for the submitted information.

¹Although you also raise sections 552.101 and 552.107 of the Government Code and Texas Rule of Evidence 503, you provide no arguments to support these claims. Therefore, we assume you have withdrawn your claims for these arguments. *See* Gov't Code §§ 552.301, .302.

You claim Exhibit C is protected under section 552.103 of the Government Code. Section 552.103 provides, in part, the following:

(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 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 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, 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.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See Open Records Decision No. 551 at 4 (1990).*

To demonstrate that litigation is reasonably anticipated, the governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *Open Records Decision No. 452 at 4 (1986)*. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* In *Open Records Decision No. 638 (1996)*, this office stated that, when a governmental body receives a notice of claim letter, it can meet its burden of showing that litigation is reasonably anticipated by representing that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act (the "TTCA"), Civil Practice and Remedies Code, chapter 101, or an applicable municipal ordinance. If that representation is not made, the receipt of the claim letter is a factor we will consider in determining, from the totality of the circumstances presented, whether the governmental body has established litigation is reasonably anticipated. *See ORD 638 at 4.*

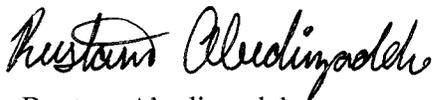
You state, and provide documentation showing, prior to the date the city received the instant request for information, the city received a notice of claim alleging property damage caused by city negligence. You further state the information in Exhibit C is related to the anticipated litigation. However, the city does not affirmatively represent to this office the claim letter is in compliance with the TTCA. Therefore, we will only consider the claim as a factor in determining whether the city reasonably anticipated litigation when it received the request for information. Based on the representations of the city, our review of the submitted documents, and the totality of circumstances, we find the city has demonstrated it reasonably anticipated litigation when it received the request for information. We also find the city has established the information in Exhibit C is related to the anticipated litigation for purposes of section 552.103(a). Therefore, the city may withhold Exhibit C under section 552.103(a) 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 reasonably anticipated. *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,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 539041

Enc. Submitted documents

c: Requestor
(w/o enclosures)