



January 13, 2015

Ms. Vanessa Burgess
Staff Attorney
Office of General Counsel
Railroad Commission of Texas
P.O. Box 12967
Austin, Texas 78711

OR2015-00643

Dear Ms. Burgess:

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# 550074.

The Railroad Commission of Texas (the "commission") received five requests from the same requestor for (1) all information provided in response to requests from two named individuals during a specified time period, and (2) all information, including grievances, pertaining to specified employees and the commission's oil and gas division. You state the commission will provide some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, you inform us some of the requested information was the subject of a previous request for a ruling, in response to which this office issued Open Records Letter No. 2014-00393 (2014). In that ruling, we determined the commission may withhold some of the information at issue under section 552.103 of the Government Code, and must release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the commission may continue to rely on

¹We 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.

Open Records Letter No. 2014-00393 as a previous determination, and withhold or release the requested information that is identical to the information that was at issue in that ruling in accordance with that ruling. *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 a 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 consider your arguments for the submitted information not at issue in the previous ruling.

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 that it seeks to withhold. To meet this burden, the governmental body must demonstrate (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).

You state, prior to the commission's receipt of the instant request, a lawsuit styled *Frederick Wright v. Railroad Commission of Texas*, Cause No. 2013-47739, was filed and is currently pending against the commission in the 11th Judicial District Court of Harris County, Texas. Therefore, we agree litigation involving the commission was pending on the date the commission received the present request for information. You also state the submitted information pertains to the substance of the lawsuit. Based on your

representations and our review, we find the submitted information is related to the pending litigation. Therefore, we conclude the commission may withhold the submitted information under section 552.103 of the Government Code.²

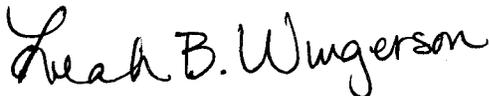
As you acknowledge, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained 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).

In summary, the commission may continue to rely on Open Records Letter No. 2014-00393 as a previous determination and withhold or release the identical information in accordance with that ruling. The commission may withhold the submitted 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 550074

Enc. Submitted documents

c: Requestor
(w/o enclosures)