



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 3, 2015

Mr. Charles T. Jeremiah
Counsel for the City of LaPorte
Chamberlain, Hrdlicka, White, Williams, & Aughtry
1200 Smith Street, Suite 1400
Houston, Texas 77002

OR2015-04070

Dear Mr. Jeremiah:

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# 556421.

The City of LaPorte (the "city"), which you represent, received a request for information regarding a specified individual and his or her authority to hire specified counsel to represent the city in a RICO and federal discrimination complaint. You claim the submitted information is excepted from disclosure under sections 552.103 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

Section 552.103 of the Government Code provides, in relevant part:

¹Although you raise section 552.101 of the Government Code in conjunction with section 552.103 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

²This letter ruling assumes the submitted "representative sample" of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

(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) applies 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 requested information 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.

You contend the submitted information is related to pending litigation to which the city is a party. You inform us, and have provided documentation demonstrating, litigation styled *Michael E. Williams v. John W. Frocke*, Civil Action No. H-14-3135, was filed in the United States District Court for the Southern District of Texas prior to receipt of the instant request. You state the submitted information is related to the pending lawsuit. Based on your representations, the submitted documentation, and our review of, we find litigation was pending when the city received this request for information and the information at issue is related to the pending litigation for the purposes of section 552.103. Therefore, the city may withhold the submitted information under section 552.103 of the Government Code.

We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. Thus, if the opposing party has seen or had access to information relating to the pending litigation through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); 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,


Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/eb

Ref: ID# 556421.

Enc. Submitted documents

c: Requestor
(w/o enclosures)