



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2015

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2015-07302

Dear Ms. Graham:

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# 560316.

The City of Mesquite (the "city") received a request for the requestor's and another named individual's answer sheets for a specified promotional examination, showing the answers picked and the correct answers. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides, in pertinent 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 has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date of the receipt of the request for information and (2) the information at issue is related to the pending or anticipated 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). A governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

You state, and provide documentation showing, at the time the city received the present request for information, the city was a party to two pending lawsuits. One lawsuit is styled *Michael Teamann v. City of Mesquite Firefighters' and Police Officers' Civil Service Commission*, Cause No. DC-14-13766 in the 44th District Court of Dallas County, Texas, and the other is styled *The Mesquite Firefighters Association v. City of Mesquite Firefighters' and Police Officers' Civil Service Commission*, Cause No. DC-14-14607 in the 44th District Court of Dallas County, Texas. You also state the submitted information relates to this litigation. Based on your representations and our review, we find the city was a party to pending litigation at the time it received the present request for information. Further, we find the submitted information relates to the pending litigation. Thus, the city may withhold the submitted information under section 552.103 of the Government Code.¹

We note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. See ORD 551 at 4-5. Thus, 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. Open Records Decision Nos. 349 (1982), 320 (1982). Further, the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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.

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

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,

A handwritten signature in black ink, appearing to read "Alley Latham", with a long horizontal flourish extending to the right.

Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

Ref: ID# 560316

Enc. Submitted documents

c: Requestor
(w/o enclosures)