



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 22, 2015

Mr. Dick H. Gregg, III  
Counsel for the City of Kemah  
Gregg & Gregg, P.C.  
16055 Space Center Boulevard, Suite 150  
Houston, Texas 77062

OR2015-07739

Dear Mr. Gregg:

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# 561938.

The City of Kemah (the "city"), which you represent, received a request for insurance policies and other information related to indemnification of city employees. The city states it does not have some of the requested information.<sup>1</sup> The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, you assert the submitted information may not be responsive to the request for information. We note 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). The submitted information consists of two separate Texas Municipal League joint self-insurance fund liability coverage documents. Upon review, we conclude the city has made a good-faith effort to relate the request to the submitted information and, thus, find the submitted information is responsive to the request. Therefore, we will consider the city's arguments against the disclosure of its information under the Act.

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

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist when the request for information was received.

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.); ORD 551 at 4. The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

The city informs us the requestor is an attorney representing an individual who filed a lawsuit against the city before the city received the request for information, and the litigation is pending: *Melcher v. City of Kemah*, No. 3:14-CV-0288 (S.D. Tex.). Thus, we agree litigation was pending when the city received the request. Furthermore, we find the submitted information is related to the pending proceedings for purposes of section 552.103. Therefore, the city may withhold the submitted information under section 552.103 of the Government Code.<sup>2</sup>

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 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

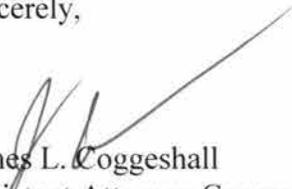
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>2</sup>As our ruling is dispositive, we do not address the city's other argument to withhold this information.

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](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/cbz

Ref: ID# 561938

Enc. Submitted documents

c: Requestor  
(w/o enclosures)