



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 29, 2015

Ms. Monica L. Perez
Counsel for the City of Socorro
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.
P.O. Box 1977
El Paso, Texas 79999-1977

OR2015-08294

Dear Ms. Perez:

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# 561613.

The City of Socorro (the "city"), which you represent, received a request for information pertaining to five specified sexual harassment cases. The city states it has released some information. The city claims the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information.

Section 552.103 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 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 the section 552.103(a) exception 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.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). We further note a contested case before the State Office of Administrative Hearings (the "SOAH") is considered litigation for the purposes of the APA. *See* Open Records Decision No. 588 at 7 (1991).

The city informs us the requestor's client is the plaintiff against the city in a lawsuit styled, *Edmundo Montoya v. City of Socorro*, 3:14-cv-00412-KC, in the U.S. District Court for the Western District of Texas, that was pending at the time the city received the request. Additionally, the city informs us the requestor's client was terminated from employment with the city and filed an administrative action against the city with SOAH that was also pending at the time the city received the request. Based on the city's representations and our review, we find the city was a party to pending litigation at the time it received the request for information. Furthermore, we agree the submitted information relates to the pending litigation. Therefore, we conclude the city may withhold the submitted information under section 552.103 of the Government Code.¹

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 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).

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 the city's remaining arguments against disclosure of 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, 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 561613

Enc. Submitted documents

c: Requestor
(w/o enclosures)