



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 19, 2015

Ms. Kristen N. Lee  
Assistant County Attorney  
County of Harris  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2015-17234

Dear Ms. Lee:

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# 576310 (ORR# 15PIA0235).

The Harris County Pollution Control Services Department (the "county") received a request for investigation reports, violations, incidents, complaints, and environmental concerns related to eleven listed properties. You state you will release some of the 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 information.

Section 552.103 provides 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 § 52.103(a), (c). The county has the burden of providing relevant facts and documents to show that 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, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas 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 county must meet both prongs of this test for information to be excepted under section 552.103(a).

You state the county had issued eight violation notices since August 2004 to a named business for multiple code violations. You state the county filed a lawsuit prior to the county's receipt of the present request for information based upon these violations. You have submitted an affidavit from the Harris County Attorney's Office stating the submitted information relates to such litigation because it contains inspections, notes, and data pertinent to the violations at issue in the ongoing litigation. Based on these representations, we find the county has demonstrated the submitted information is related to litigation that was pending on the date the county received the request for information. Therefore, the county may withhold the submitted information under section 552.103(a) of the Government Code.

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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. 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](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,



Joseph Keeney  
Assistant Attorney General  
Open Records Division

JDK/eb

Ref: ID# 576310

Enc. Submitted documents

c: Requestor  
(w/o enclosures)