



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 8, 2015

Ms. Stacie Keeble
Counsel for the City of Ingram
The Law Office of Patrick O'Fiel, P.C.
200 Earl Garrett, Suite 206
Kerrville, Texas 78028

OR2015-18649

Dear Ms. Keeble:

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# 578406.

The City of Ingram (the "city"), which you represent, received a request for the following information: 1) the amount the city has reimbursed Hill Country Telephone Cooperative ("HCTC") pursuant to a specified contract, 2) a copy of a contract between HCTC and its contractor, and 3) the amount HCTC has paid for the project outlined in the specified contract. You state the city does not have information responsive to items 1 and 3 of the request for information.¹ 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.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the present request for information. This ruling does not address the public availability of non-responsive information, and the city need not release non-responsive information to the requestor.

Section 552.103 of the Government Code provides in relevant part as follows:

¹The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(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).

You state a lawsuit styled *Sheffield et al v. City of Ingram, Texas et al*, civil action number 515-cv-00512, was pending against the city in the United States District Court for the Western District of Texas, San Antonio Division, when the city received the request for information. Therefore, we agree litigation was pending when the city received the request. However, upon review, we find the city has not demonstrated the responsive information pertains to the pending litigation. Therefore, the city may not withhold the responsive information under section 552.103(a) of the Government Code. As you raise no further exceptions to disclosure, the city must release the responsive information.

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,

A handwritten signature in black ink, appearing to read "Kristi L. Godden". The signature is fluid and cursive, with a large initial "K" and a long, sweeping underline.

Kristi L. Godden
Assistant Attorney General
Open Records Division

KLK/cz

Ref: ID# 578406

Enc. Submitted documents

c: Requestor
(w/o enclosures)