



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 18, 2015

Ms. Danielle R. Folsom
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2015-19594

Dear Ms. Folsom:

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# 579683 (G.C. No. 22475).

The City of Houston (the "city") received a request for information pertaining to terminations, suspensions, and written reprimands issued to city police officers and fire fighters during a specified time period. 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.

You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code, which 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). A governmental body claiming section 552.103 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 on the date the governmental body received the request, 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 under section 552.103(a).

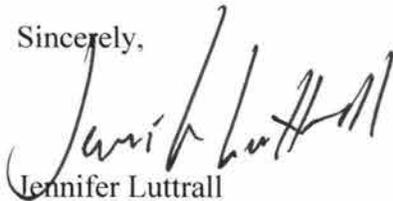
You state the city is a civil service city under chapter 143 of the Local Government Code. You also state the submitted information pertains to a fire fighter who has filed an appeal to his indefinite suspension pursuant to chapter 143 of the Local Government Code. We note municipal civil service appeals, such as the one at issue here, are governed by chapter 143 of the Local Government Code. *See* Local Gov't Code § § 143.057, .127-. 131. This office has determined such appeal proceedings constitute litigation for purposes of section 552.103. *Cf.* Open Records Decision No. 588 (1991). You state the appeal of the indefinite suspension was pending on the date the city received the request for information. Based on your representations and our review of the documents at issue, we find the city was a party to pending litigation on the date it received the request for information. Further, you state the information at issue relates to the pending appeal. Upon review, we find the information at issue is related to the pending litigation. Accordingly, we conclude section 552.103 is generally applicable to the submitted information.

However, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103 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 anticipated litigation is not excepted from disclosure under section 552.103(a). We note the opposing party to the pending litigation has seen or had access to some of the information at issue. Therefore, the city may not withhold this information under section 552.103(a). However, we agree the city may withhold the information we have marked under section 552.103(a). We note the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision No. 350 (1982). As you raise no further exceptions to disclosure, the remaining information must be released.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 579683

Enc. Submitted documents

c: Requestor
(w/o enclosures)