



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 29, 2015

Ms. Tiffany Evans  
Assistant City Attorney  
City of Houston  
Post Office Box 368  
Houston, Texas 77001-0368

OR2015-20440

Dear Ms. Evans:

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 originally received by the Open Records Division ("ORD") of this office and assigned ID# 581168 (City of Houston GC No. 22495). Preparation of the ruling has been assigned to the Opinion Committee of this office.

You inform us that, on July 8, 2015, the City of Houston (the "city") received a request for copies of any email correspondence sent to or received by the city mayor's office in 2014 regarding Uber, Uber Inc., or Uber Technologies, Inc. You state you will release some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

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

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Tex. Att'y Gen. ORD-499 (1988) at 6, ORD-497 (1988) at 4. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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.

TEX. GOV'T CODE ANN. 552.103(a), (c) (West 2012). The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* Tex. Att'y Gen. ORD-551 (1990) at 4-5. A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) applies in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the requested information is related to that litigation. *See 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.); Tex. Att'y Gen. ORD-551 (1990) at 4. The governmental body must meet both parts of this test for information to be excepted under section 552.103(a). *See* Tex. Att'y Gen. ORD-551 (1990) at 4.

The city states, and provides documentation showing, that lawsuits styled *Raiser LLC v. Paxton*, Nos. D-1-GN-15-001098, D-1-GN-15-001355, D-1-GN-15-001596, D-1-GN-15-001788, D-1-GN-15-001744, and D-1-GN-15-002404 were pending against the city when it received the request for information. Therefore, we agree litigation was pending when the city received the request. We also find the city has established that the submitted information is related to the pending litigation for purposes of section 552.103(a) of the Government Code. Therefore, the city may withhold the submitted information under section 552.103(a) of the Government Code.<sup>2</sup>

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* Tex. Att'y Gen. ORD-349 (1982) at 2, ORD-320 (1982) at 1. Thus, information that has either been obtained from or provided to all parties to the anticipated 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

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<sup>2</sup>Because section 552.103 is dispositive, we do not address your other claimed exception.

or is no longer anticipated. *See* Tex. Att’y Gen. Op. No. MW-575 (1982) at 2; *see also* Tex. Att’y Gen. ORD-350 (1982) at 3.

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,

A handwritten signature in cursive script, appearing to read "William A. Hill".

William A. Hill  
Assistant Attorney General  
Opinion Committee

WAH/sdk

Ref: ID# 581168

Enc. Submitted documents

c: Requestor  
(w/o enclosures)