



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 13, 2015

Ms. Marie N. Rovira
Counsel for the City of Pilot Point
Messer, Rockefeller & Fort, P.L.L.C.
6351 Preston Road, Suite 350
Frisco, Texas 75034

OR2015-21388

Dear Ms. Rovira:

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# 583095.

The City of Pilot Point (the "city"), which you represent, received a request for information related to the city's charter and the city's annexation of specified property.¹ You state the city has released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have marked some of the submitted information as not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

¹We note the governmental body sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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

(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 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, org. 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

You contend the submitted information is related to pending litigation to which the city is a party. You inform us, and have provided documentation demonstrating, litigation styled *Eland Farms, L.P. v. City of Pilot Point, Texas*, Cause No. 14-03760-362, is pending in the 362nd Judicial District Court of Denton County, Texas. You state the submitted information is related to a pending lawsuit regarding city annexations of property. Based on your representations, the submitted documentation, and our review, we find litigation was pending when the city received this request for information and the information at issue is related to the pending litigation for the purposes of section 552.103. Therefore, the city may withhold the submitted information under section 552.103 of the Government Code.²

We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. Thus, if the opposing party has seen or had access to information relating to the pending litigation

²As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103 ends once the related litigation concludes. *See* 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, 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 583095

Enc. Submitted documents

c: Requestor
(w/o enclosures)