



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 19, 2015

Ms. Heather Silver
Assistant City Attorney
Office of the City Attorney
City of Dallas
1500 Marilla, Room 7DN
Dallas, Texas 75201

OR2015-21851

Dear Ms. Silver:

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# 584702.

The City of Dallas (the "city") received a request for thirteen categories of information related to the requestor, correspondence between named city employees, and specified hearings and meetings.¹ You state the city will release some of the requested information upon payment of charges. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹You state the city 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) (holding that when 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).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, the requestor asserts he has a right of access to the requested information because the information is “about [the requestor] as a person who has a special right of access, beyond that of the general public,” to any information about the requestor under section 552.023 of the Government Code. Section 552.023 of the Government Code provides, in part, that a person or a person’s authorized representative has a special right of access to information that is excepted from public disclosure under laws intended to protect that person’s privacy interest. *See id.* § 552.023(a). However, sections 552.103 and 552.111 are not exceptions to disclosure that are intended to protect the privacy of any individual. *See id.* §§ 552.103 (section 552.103 intended to protect information related to litigation in which governmental body is party), .111 (section 552.111 intended to protect interagency or intraagency memoranda or letters that would not be available by law to a party in litigation with the agency); *see also id.* § 552.023(b) (governmental body may assert provisions of Act or other law that are not intended to protect person’s privacy interests to withhold information to which requestor may otherwise have a special right of access). Thus, section 552.023 does not provide the requestor a right of access to information subject to section 552.103 or section 552.111. As such, we will consider the city’s claims under these exceptions.

Section 552.103 of the Government Code 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.

Id. § 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). This office has stated a pending complaint with the Equal Employment Opportunity

Commission (the "EEOC") indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982).

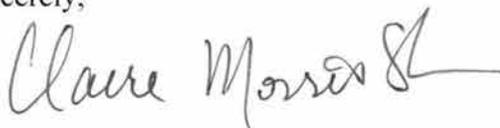
You claim the submitted information is subject to section 552.103 of the Government Code. The city states, and the submitted documentation reveals, prior to the city's receipt of the request for information, the requestor filed a complaint against the city with the EEOC. Based on this representation and our review, we find the city has demonstrated it reasonably anticipated litigation when it received the request for information. We also find the city has established the submitted information is related to the anticipated litigation for purposes of section 552.103(a). Therefore, the city may withhold the submitted information under section 552.103 of the Government Code.³

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* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending or 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. *See* Attorney General Opinion MW-575 (1982); *see also* 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

³As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

Ref: ID# 584702

c: Requestor