



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 7, 2016

Ms. Erin Higginbotham
Counsel for City of West Lake Hills
Bojorquez Law Firm, PLLC
12325 Hymeadow Drive, Suite 2-100
Austin, Texas 78750

OR2016-00444

Dear Ms. Higginbotham:

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# 594013.

The City of West Lake Hills (the "city"), which you represent, received a request for any communications between the city and a specified business. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.117, 552.1176, 552.127, 552.132, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.103 of the Government Code provides 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

¹We 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 that those records contain substantially different types of information than that submitted to this office.

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 the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).v

The city states lawsuits styled *Peace v. Hovis*, Cause No. D-1-GN-13-00398, and *City of West Lake Hills v. Peace (Parcel 18)*, Cause No. C-1-CV-14-010241, were pending against the city when it received the instant request for information. You state the submitted information is related to the pending lawsuits. Based on your representations, the submitted documentation, and our review of the submitted information, we find litigation was pending when the city received this request for information; we also find the city has demonstrated the submitted information is related to the pending litigation for the purposes of section 552.103(a). Therefore, the city may withhold the submitted information under section 552.103(a) of the Government Code.²

Generally, however, once information has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also 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 at 3 (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.

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

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 cursive script that reads "Ashley Crutchfield". The signature is written in black ink and is positioned above the typed name.

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/sb

Ref: ID# 594013

Enc. Submitted documents

c: Requestor
(w/o enclosures)