



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 2, 2016

Mr. Quentin D. Price
First Assistant City Attorney
Legal Department
City of Beaumont
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2016-02547

Dear Mr. Price:

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# 596581 (Beaumont TPIA No. 11-05 and 11-09).

The City of Beaumont (the "city") received two requests from the same requestor for information pertaining to (1) any charges filed against a named employee of the Beaumont Fire Department (the "department"), including punishment received and the names of investigators involved, and (2) the number of specified charges and type of discipline another named department employee received. 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.

Initially, we note portions of the submitted information are subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(18) a settlement agreement to which a governmental body is a party.

Gov't Code § 552.022(a)(1), (18). The information we have marked consists of a completed investigation subject to section 552.022(a)(1). The city must release the completed investigation pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). Portions of the submitted information also consist of a settlement agreement subject to section 552.022(a)(18). The information subject to section 552.022(a)(18), which we have marked, must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(18). Although you raise section 552.103 of the Government Code for the entirety of the submitted information, this section is a discretionary exception to disclosure and does not make information confidential under the Act. Therefore, none of the information subject to section 552.022, which we have marked, may be withheld under section 552.103. However, we will consider your argument under section 552.103 for the information not subject to section 552.022.

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). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) is applicable 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 information at issue 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.*); 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.

We note, the city is a civil service city under chapter 143 of the Local Government Code. You state the submitted information pertains to a fire fighter who has filed an appeal to his termination pursuant to chapter 143 of the Local Government Code. We note municipal civil service appeals, such as the one at issue in this matter, 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 of the requestor 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 agree the information at issue is related to the pending litigation. Therefore, we conclude the city may withhold the information not subject to section 552.022 under section 552.103 of the Government Code.

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 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). The remaining information must be released.

In summary, the city must release the information we have marked pursuant to sections 552.022(a)(1) and 552.022(a)(18) of the Government Code. The city may withhold the remaining submitted information under section 552.103(a) of the Government Code.

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,

A handwritten signature in black ink that reads "Katelyn Blackburn-Rader". The signature is written in a cursive style with a large initial "K".

Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/bw

Ref: ID# 596581

Enc. Submitted documents

c: Requestor
(w/o enclosures)