



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 5, 2016

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

OR2016-02902

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# 597166 (PIA No. 11-29).

The City of Beaumont (the "city") received a request for all records relating to complaints filed by a named former employee against another named employee. 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.

The city acknowledges some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-24745. In Open Records Letter No. 2015-24745, we determined, the city must release certain information. The city seeks to withhold the information at issue under section 552.103 of the Government Code. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the city may not now withhold the previously released information unless its release is expressly prohibited by law or the information is confidential by law. Section 552.103 does not prohibit the release of

information or make information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the city may not now withhold the information previously ordered released under section 552.103. However, we note portions of this information are subject to sections 552.117 and 552.137 of the Government Code, which make information confidential under the Act. Thus, we will address the applicability of these exceptions to this information, as well as your arguments under section 552.103 for the information that was not at issue in the previous ruling.<sup>1</sup>

Section 552.103 of the Government Code provides, in 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 that claims an exception to disclosure under section 552.103 of the Government Code has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate 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 the pending or anticipated 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.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See Open Records Decision No. 551 at 4 (1990).*

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

For purposes of section 552.103, "litigation" includes contested cases conducted in a quasi-judicial forum. Open Records Decision Nos. 588 at 2 (1991), 474 at 6 (1987) (disciplinary action before Texas State Board of Pharmacy), 368 at 2 (1983) (administrative hearing before Commissioner of Insurance), 301 at 1-2 (1982). Likewise, "contested cases" conducted under the Texas Administrative Procedure Act, chapter 2001 of the Government Code, constitute "litigation" for purposes of section 552.103. *See, e.g.*, ORD 588 at 7 (State Board of Insurance proceeding), 301 at 2 (hearing before Public Utilities Commission). Factors this office considers in determining whether an administrative proceeding is conducted in a quasi-judicial forum include whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See* ORD 588 at 3-4.

The city provides documentation showing, prior to the city's receipt of the request, a fire fighter with the city filed an appeal challenging the city's actions regarding his indefinite suspension. You inform us the appeal is to be considered by a third-party hearing examiner, in binding arbitration, as authorized by chapter 143 of the Local Government Code. *See* Local Gov't Code §§ 143.057, .127-.131. We understand the arbitration is governed by the Labor Rules of the American Arbitration Association (the "AAA"). We note, under the AAA's Labor Rules, the parties may be represented by counsel, witnesses may be required to testify under oath, an arbitrator authorized by law to subpoena witnesses and documents may do so, and the arbitrator is the judge of the relevance and materiality of the evidence. Thus, we understand the city to assert the arbitration constitutes litigation of a judicial or quasi-judicial nature for purposes of section 552.103. *See generally* ORD 301 (discussing meaning of "litigation" under predecessor to section 552.103).

Based on these representations and our review, we find the city was a party to pending litigation when it received the request for information. Additionally, you explain, and we agree, the information at issue relates to the pending litigation. Therefore, we conclude the city may withhold the information we have marked, which was not at issue in Open Records Letter No. 2015-24745, under section 552.103 of the Government Code.

We note once the 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. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation is concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for the information is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must

withhold information under section 552.117(a)(1) on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. Accordingly, if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024, the city must withhold the information we have marked under section 552.117(a)(1).

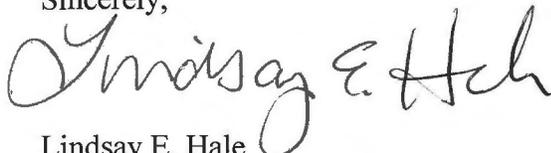
Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail address we have marked is not of the type specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release.

In summary, the city may withhold the information we have marked under section 552.103 of the Government Code. If the individual whose information is at issue timely requested confidentiality pursuant to section 552.024, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release. The remaining information must be released.

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 black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/bhf

Ref: ID# 597166

Enc. Submitted documents

c: Requestor  
(w/o enclosures)