



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 9, 2016

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

OR2016-05471

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# 601000 (City ORR Nos. 12-24, 12-25, 12-26, 12-27, 12-28, and 12-29).

The City of Beaumont (the "city") received six requests from the same requestor for all e-mails sent to and received from named individuals pertaining to specified subjects during a specified time period. You state some information is being produced to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is 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:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information contains a court-filed document that is subject to section 552.022(a)(17). This information must be released unless it is made

confidential under the Act or other law. *See id.* You seek to withhold the information subject to section 552.022(a)(17) under section 552.103 of the Government Code. However, sections 552.103 is discretionary in nature and does not make information confidential under the Act. *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 Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the information subject to section 552.022, which we have marked, may not be withheld under section 552.103 of the Government Code. As you raise no further exceptions to disclosure of this information, it must be released. 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 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.

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).

You contend the remaining information you indicated is related to pending litigation to which the city is a party. You inform us, and have provided documentation demonstrating, litigation styled *James Matthews v. City of Beaumont, Texas*, Cause No. A-0192887, was pending in the 60th Judicial District Court of Jefferson County, Texas on the date the city received the request. You further explain the information at issue is related to the pending lawsuit because it pertains to the appeal of a fire fighter's termination, the circumstances of which is the issue of the pending litigation. Based on your representations, the submitted

documentation, and our review of the information at issue, we find litigation was pending when the city received this request for information, and we find the information at issue is related to the pending litigation for purposes of section 552.103. Therefore, the city may withhold the remaining information you indicated under section 552.103 of the Government Code.¹

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 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).

In summary, the city must release the information subject to section 552.022(a)(17), which we have marked. The city may withhold the remaining information you indicated under section 552.103 of the Government Code. The city must release the remaining information.

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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Ref: ID# 601000

Enc. Submitted documents

c: Requestor
(w/o enclosures)