



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 17, 2016

Ms. Akilah Mance
Counsel for the City of Prairie View
Olson & Olson LLP
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2016-06228

Dear Ms. Mance:

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# 601801.

The City of Prairie View (the "city"), which you represent, received a request for certain background checks related to the requestor and information related to two city council meetings. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.106 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note some of the submitted information consists of agendas and minutes of public meetings of the city council. The agendas and minutes of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. Gov't Code §§ 551.022 (minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to public for at least 72 hours before scheduled time of meeting). Although you raise sections 552.103 and 552.106 of the Government Code, as a general rule, the exceptions to disclosure found in the Act, such as section 552.103 and section 552.106, do not apply to information that other statutes make public. *See Open Records Decision*

Nos. 623 at 3 (1994), 525 at 3 (1989). Thus, the city must release the agendas and minutes of the public meetings pursuant to chapter 551 of the Government Code.

Section 552.103 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). The city has the burden of providing relevant facts and documents to show that 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, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas 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 city must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and submit documentation showing, prior to the date the city received the instant request, the requestor filed a lawsuit styled *Kelley v. City of Prairie View*, Cause No. 15-08-23293, in the 506th District Court of Waller County. Upon review, we agree litigation was pending at the time of the present request for information. You state the information at issue relates to the litigation because it pertains to the requestor's employment by the city. Based on these representations, we find the city has demonstrated some of the information is related to pending litigation. Therefore, the commission may withhold the information we have marked under section 552.103(a) of the Government Code. However, you have failed to demonstrate the remaining information is related to the pending litigation. Thus, none of the remaining information may be withheld under section 552.103 of the Government Code.

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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that

has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Section 552.106(a) of the Government Code excepts from required public disclosure “[a] draft or working paper involved in the preparation of proposed legislation[.]” Gov’t Code § 552.106(a). Section 552.106(a) ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. *See* Open Records Decision No. 460 at 1 (1987). The purpose of this exception is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body. Therefore, section 552.106 encompasses only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation and does not except purely factual information from public disclosure. *Id.* at 2. However, a comparison or analysis of factual information prepared to support proposed legislation is within the ambit of section 552.106. *Id.* A proposed budget constitutes a recommendation by its very nature and may be withheld under section 552.106. *Id.*

The city states the information at issue consists of drafts of ordinances and other information that reflects policy judgments, recommendations, and proposals by city staff. Upon review, we find the city has established some of the remaining information constitutes advice, opinion, analysis, and recommendations regarding ordinances or resolutions related to the city. Therefore, the city may withhold the information we have marked under section 552.106 of the Government Code. However, you have not demonstrated the remaining information constitutes policy judgments, recommendations, and proposals. Thus, the city may not withhold the remaining information under section 552.106 of the Government Code.

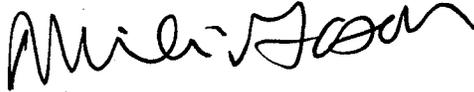
In summary, the city must release the agendas and minutes of the public meetings pursuant to chapter 551 of the Government Code. The city may withhold the information we have marked under section 552.103 of the Government Code. The city may withhold the information we have marked under section 552.106 of the Government Code. 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, 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, appearing to read "Mili Gosar". The signature is fluid and cursive, with the first name "Mili" and last name "Gosar" clearly distinguishable.

Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 601801

Enc. Submitted documents

c: Requestor
(w/o enclosures)