



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 8, 2016

Ms. Lauren Downey
Assistant Attorney General
Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2016-07964

Dear Ms. Downey:

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# 604948 (PIR No. 16-43248).

The Office of the Attorney General (the "OAG") received a request for information pertaining to two specified entities for a specified time period, excluding press clips. You state the OAG will continue to rely on Open Records Letter Nos. 2016-02200A (2016), 2016-02492 (2016), and 2016-03879 (2016) with respect to some of the requested information.¹ See Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of

¹In Open Records Letter No. 2016-02200A, this office held the OAG may withhold the information at issue in that ruling under section 552.107(1) of the Government Code. In Open Records Letter No. 2016-02492, this office held the OAG may withhold the information at issue in that ruling under section 552.103(a) of the Government Code. In Open Records Letter Ruling No. 2016-03879, this office held the OAG may withhold certain information under sections 552.107(1) and 552.111 of the Government Code.

the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, as you acknowledge, the requestor seeks information created through the date of the request, as well as information created after the date of the request. It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 87 (1975). Consequently, a governmental body is not required to comply with a standing request to supply information prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the only information encompassed by the present request consists of information the OAG maintained or had a right of access to as of the date it received the request.

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.

Gov't Code § 552.103(a), (c). The 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 that (1) litigation is 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,

²We 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.

writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

You state the "OAG is leading a twenty-four state coalition that filed a lawsuit in federal court, prior to the date of the request, challenging the Obama Administration's Section 111(d) Rule, as promulgated by the [United States] Environmental Protection Agency." Additionally, you state, "prior to the date of the request, the OAG filed a complaint in the United States District Court for the Southern District of Texas challenging issues related to the Clean Water Rule." Based upon your representation and our review, we conclude you have established litigation was pending when the OAG received the request. Further, you state, and we agree, the submitted information relates to the pending cases. Accordingly, the OAG may withhold the submitted information under section 552.103(a).³

However, once the information has been obtained by all parties to the anticipated litigation, 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 has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

³As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 604948

Enc. Submitted documents

c: Requestor
(w/o enclosures)