



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 22, 2016

Mr. Laurence E. Boyd
Counsel for the City of Iowa Colony
P.O. Box 269
Angleton, Texas 77516-0269

OR2016-09017

Dear Mr. Boyd:

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# 606804.

The City of Iowa Colony (the "city"), which you represent, received a request for (1) the requestor's personnel file; (2) all current general orders, standard operating procedures, rules manual, and employee handbooks or manuals; and (3) all correspondence between named individuals pertaining to an investigation and complaints against the requestor. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, 552.111, and 552.137 of the Government Code.¹ We have considered the exceptions 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:

...

¹Although the city does not raise section 552.137 of the Government Code in its brief, we understand it to raise this exception based on its markings.

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). Portions of the submitted information consist of information relating to the receipt of funds by a governmental body subject to section 552.022(a)(3). The information subject to section 552.022(a)(3), which we have marked, must be released, unless it is made confidential under the Act or other law. *See id.* Although you raise section 552.103 of the Government Code for this information, this is a discretionary exception to disclosure 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); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, none of the information subject to section 552.022(a)(3) may be withheld under section 552.103 of the Government Code. As you raise no other exceptions against disclosure, the information we have marked must be released pursuant to section 552.022(a)(3) of the Government Code. However, we will address your arguments against disclosure of the remaining information.

Next, we turn to the information not subject to section 552.022 of the Government Code. Section 552.103 of the Government Code provides, in relevant 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). The city 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 was pending or reasonably anticipated on the date of the receipt of 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.); 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). We note contested cases conducted under the Administrative Procedure Act (the “APA”), chapter 2001 of the Government Code, are considered litigation for purposes of section 552.103. *See* Open Records Decision No. 588 at 7 (1991). We further note a contested case before the State Office of Administrative Hearings (“SOAH”) is considered litigation for the purposes of the APA. *See id.*

You explain the city is a party to a pending contested case before SOAH that pertains to the requestor’s petition to the Texas Commission on Law Enforcement to correct her F-5 Report of Separation from the city’s police department. You explain, and submit supporting documentation that demonstrates, the case was pending at the time of the request. Based upon your representations and our review, we find the city was a party to pending litigation on the date it received the request. Further, you state, and we agree, the information at issue relates to the pending litigation. Therefore, we agree section 552.103(a) is applicable to the submitted information.

However, once information has been obtained by all parties to the pending 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 the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a). We note the opposing party to the pending litigation has seen or had access to some of the submitted information. Therefore, the city may not withhold this information, which we have marked, under section 552.103(a). However, we agree the city may withhold the remaining information under section 552.103(a).² We note the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision No. 350 (1982).

In summary, the city must release the information we marked under section 552.022(a)(3) of the Government Code. With the exception of the information we have marked for release, the city may withhold the remaining information under section 552.103 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.

²As our ruling is dispositive, we need not address the city’s remaining arguments against disclosure of this information.

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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/bw

Ref: ID# 606804

Enc. Submitted documents

c: Requestor
(w/o enclosures)