



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 12, 2016

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

OR2016-10890

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# 609832 (City TPIA No. 02-67).

The City of Beaumont (the "city") received a request for information pertaining to disciplinary actions taken against seven named individuals from the city's fire department. You state the city is releasing some of the requested information to the requestor. You claim some of 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.

Initially, you state some of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2016-02559 (2016) and 2016-04059 (2016). We have no indication the law, facts, or circumstances on which the prior rulings were based have changed. Accordingly, the city must continue to rely on Open Records Letter Nos. 2016-002559 and 2016-04059 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). We will address the city's claim under section 552.103 of the Government Code for the remaining submitted information, which the city has labeled Exhibit E.

Next, we note Exhibit E contains information that is subject to section 552.022 of the Government Code, which provides, in part, the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

...

(18) a settlement agreement to which a governmental body is a party.

Gov't Code § 552.022(a)(1), (18). Exhibit E contains completed evaluations and a settlement agreement that are subject to sections 552.022(a)(1) and 552.022(a)(18), respectively. We note the city does not raise section 552.108 for the completed evaluations. Thus, the city must release the information subject to section 552.022 unless it is expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1), (18). The city asserts this information is excepted from disclosure under section 552.103 of the Government Code. However, section 552.103 is a discretionary 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 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 withhold the information subject to section 552.022 of the Government Code, which we have marked, under section 552.103. As the city does not raise another exception to disclosure, the city must release the information we have marked under section 552.022. However, we will address the city's claim under section 552.103 for the information in Exhibit E that is not subject to section 552.022.

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). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) 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 the governmental body received the request for information, and (2) the information at issue is related to that 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551.

We understand the city is a civil service city under chapter 143 of the Local Government Code. You state the submitted information pertains to a fire fighter who has filed an appeal of his termination pursuant to chapter 143 of the Local Government Code. We note municipal civil service appeals, such as the one at issue here, are governed by chapter 143 of the Local Government Code. *See* Local Gov't Code §§ 143.057, .127-.131. This office has determined such appeal proceedings constitute litigation for purposes of section 552.103. *Cf.* Open Records Decision No. 588 (1991). You state the appeal of the termination was pending on the date the city received the request for information. Based on your representations and our review of the documents at issue, we find the city was a party to pending litigation on the date it received the request for information. Further, you state, and we agree, the information at issue relates to the pending appeal. Therefore, we conclude the city may withhold the information in Exhibit E that is not subject to section 552.022 under section 552.103 of the Government Code.

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. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the city must continue to rely on Open Records Letter Nos. 2016-002559 and 2016-04059 as previous determinations and withhold or release the identical information in accordance with those rulings. The city must release the information we have marked under section 552.022 of the Government Code. 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.

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 "Lee Seidlits", written in a cursive style.

Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/bw

Ref: ID# 609832

Enc. Submitted documents

c: Requestor
(w/o enclosures)