



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 1, 2016

Mr. Bryan Scott McWilliams  
Assistant City Attorney  
City of Amarillo  
P.O. Box 1971  
Amarillo, Texas 76105-1971

OR2016-12441

Dear Mr. McWilliams:

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# 612568.

The City of Amarillo (the "city") received forty-two requests from the same requestor for information related to numerous named individuals. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code.<sup>1</sup> We have considered the raised argument and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note some of the submitted information is not responsive to the request for information because it does not relate to any of the named individuals. This ruling does not

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<sup>1</sup>Although you also raise section 552.101 of the Government Code in conjunction with section 552.103 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision No. 676 at 1-2 (2002).

<sup>2</sup>This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize the withholding of, any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

address the public availability of any information that is not responsive to the request, and the city is not required to release this information in response to this 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, 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, and the submitted documentation reflects, a lawsuit styled *Rachel McKee, et al. v. City of Amarillo*, Cause No. 2:16-cv-00009-J, was pending in the United States District Court for the Northern District of Texas, Amarillo division, when the city received the request for information. Therefore, we agree litigation was pending when the city received the request. We also find you have established the submitted information is related to the pending litigation for purposes of section 552.103(a). Therefore, the city may withhold the responsive information under section 552.103(a).

However, once the information has been obtained by all parties to the pending 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](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 "J. Behrke", with a horizontal line extending to the right.

Joseph Behrke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 612568

Enc. Submitted documents

c: Requestor  
(w/o enclosures)