



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2016

Mr. Matthew L. Butler
Counsel for the City of Bedford
Boyle & Lowry, L.L.P.
4201 Wingren Drive, Suite 108
Irving, Texas 75062-2763

OR2016-16049

Dear Mr. Butler:

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# 618667.

The City of Bedford (the "city"), which you represent, received a request for specified meeting minutes, city ordinances, and power point presentations. You state you have released some information to the requestor. You also state you do not have some of the requested information.¹ You claim 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.

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

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 the submitted information is the subject of pending litigation. You inform us, and provide documentation showing, prior to the receipt of the instant request a lawsuit was filed against the city styled *Apartment Association of Tarrant County, Inc. v. City of Bedford*, Cause No. 017-284750-16, on April 6, 2016. Based upon your representation and our review, we find litigation was pending at the time the city received the present request. Further, we agree the information at issue relates to the pending litigation for the purposes of section 552.103. Therefore, we find the city may withhold the submitted information under section 552.103(a) of the Government Code.

However, we note once the responsive information has been obtained by all parties to the 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,

A handwritten signature in black ink, appearing to read 'C. Hutchison', with a long horizontal flourish extending to the right.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 618667

Enc. Submitted documents

c: Requestor
(w/o enclosures)