



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 21, 2016

Ms. Tiffany N. Evans
Assistant City Attorney
Legal Department
City of Houston
Post Office Box 368
Houston, Texas 77001-0368

OR2016-16511

Dear Ms. Evans:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. This request was originally received by the Open Records Division ("ORD") of this office and assigned ID# 619599 (GC No. 23374). Because the ruling request involves litigation to which the Open Records Division is a party, preparation of this ruling has been assigned instead to the Opinion Committee.

The City of Houston ("City") received a public information request for "a copy of 2013 Captain /Sr Captain list along with the individuals name they replaced and dates they were promoted." You tell us the information "consists of the captain promotion log sheet indicating the name[s] of individuals who passed the exam and were promoted." You claim the information submitted in Exhibit 2 is excepted from disclosure under Government Code section 552.103(1) 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:

- (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.

TEX. GOV'T CODE § 552.103(a), (c). A 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 (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. *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.); Tex. Att'y Gen. ORD-551 (1990) at 4. A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You provide documentation showing that at the time the City received the present request for information the City was a party to a lawsuit styled *City of Houston v. Captain Edwin Scott Hilburn*, No. 16-0330, now pending in the Texas Supreme Court. You state the captain promotion log sheet information is related to the pending lawsuit. We agree litigation was pending when the City received this request for information. We also find that the submitted information in Exhibit 2 is related to the pending litigation for the purposes of section 552.103. Therefore, the City may withhold the captain promotion log sheet under section 552.103(a) of the Government Code.

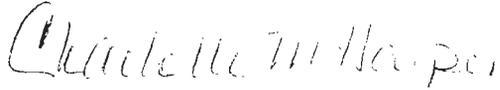
However, once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to this information. Tex. Att'y Gen. ORD-349 (1982) at 2. We also note that the applicability of section 552.103(a) ends once the litigation has concluded. Tex. Att'y Gen. Op. No. MW-575 (1982) at 1; Tex. Att'y Gen. ORD-350 (1982) at 3.

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 cursive script that reads "Charlotte M. Harper".

Charlotte M. Harper
Assistant Attorney General
Opinion Committee

CMH/sdk

Ref: ID# 619599

Enc. submitted documents

c: Requestor
(w/o enclosures)