



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-06959

Dear Ms. Byles:

~~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# 343834 (Fort Worth PIR Request No. 2385-09).~~

The City of Fort Worth (the "city") received a request for information pertaining to a specified accident. You claim the requested information is excepted from disclosure under sections 552.103 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us that most of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-04738 (2008). You do not indicate that there has been a change in the law, facts, and circumstances on which the previous ruling is based. We therefore conclude that the city must dispose of the information previously requested and ruled upon by this office in the prior ruling in accordance with Open Records Letter No. 2008-04738. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). You inform us that some of the submitted information was not previously ruled upon. Therefore, we will address your arguments against disclosure of the submitted information not previously ruled upon.

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 that 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, 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, no pet.); *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 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* In Open Records Decision No. 638 (1996), this office stated that a governmental body has met its burden of showing that litigation is reasonably anticipated when it received a notice of claim letter and the governmental body represents that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act ("TTCA"), chapter 101 of the Civil Practice and Remedies Code, or an applicable municipal ordinance. If a governmental body does not make this representation, the claim letter is a factor that this office will consider in determining whether a governmental body has established that litigation is reasonably anticipated based on the totality of the circumstances.

You state the city reasonably anticipates litigation concerning the accident specified in the request. You also provide documentation showing that, prior to the city's receipt of the present request, the individual involved in the specified accident filed a notice of claim against the city and submitted a demand letter for payment pertaining to her alleged injuries. We note, however, that you have not represented that this notice of claim meets the requirements of the TTCA. Therefore, we will only consider the claim as a factor in determining whether the city reasonably anticipated litigation over the incident in question. Based on your representations, our review of the submitted information, and the totality of

the circumstances, we agree that litigation was reasonably anticipated on the date the request was received. We also conclude that the remaining submitted information relates to the anticipated litigation for the purposes of section 552.103.

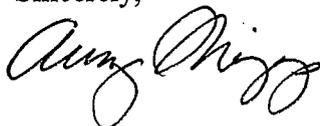
We note, however, the opposing party in the anticipated litigation appears to have already seen or had access to some of the remaining submitted information. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information that is related to litigation through discovery procedures. See ORD 551 at 4-5. If the opposing party has seen or had access to information that is related to the litigation, through discovery or otherwise, then there is no interest in withholding such information from public disclosure under section 552.103. See Open Records Decision Nos. 349 (1982), 320 (1982). Thus, the information the opposing party has seen or to which she has already had access to may not be withheld under section 552.103. Otherwise, the city may withhold the remaining submitted information under section 552.103. Further, the applicability of section 552.103(a) ends once the litigation has concluded or is no longer anticipated. See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 (1982).

In summary, the city must dispose of the information previously requested and ruled upon by this office in the prior ruling in accordance with Open Records Letter No. 2008-04738. The city may withhold the remaining information that the opposing party has not seen or had access to under section 552.103 of the Government Code. As our ruling is dispositive, we do not address your remaining argument against disclosure.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 343834

Enc. Submitted documents

cc: Requestor
(w/o enclosures)