



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2012

Ms. LeAnn M. Quinn, TRMC
City Secretary
City of Cedar Park
450 Cypress Creek Road, Building One
Cedar Park, Texas 78613

OR2012-19271

Dear Ms. Quinn:

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# 473072 (City Ref. No. 12-828).

The City of Cedar Park (the "city") received a request for a letter regarding a specified incident sent from the former chief of the city's fire department (the "department") to a named former employee of the department during December 2011. 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.

Initially, we note you have submitted information other than the requested correspondence. As such, this information, which we have marked, is not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release such information in response to this request.

You claim that the information at issue is protected under section 552.103 of the Government Code. Section 552.103 provides, in 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 that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate 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 the pending or anticipated litigation. See *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.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). See Open Records Decision No. 551 at 4 (1990).

You state, and provide supporting documentation showing, a lawsuit styled *Jenkins v. City of Cedar Park*, Cause No. D-1-GN-12-002849 was filed in the 200th Judicial District Court of Travis County prior to the city's receipt of the present request for information. Based on your representations and our review, 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 litigation. Accordingly, we conclude the city may withhold the responsive information under section 552.103.

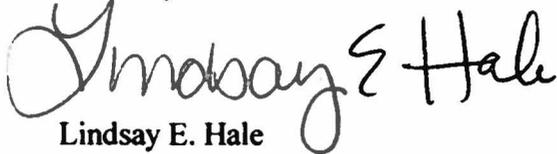
We note once information has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. See Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 350 (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.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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 473072

Enc. Submitted documents

c: Requestor
(w/o enclosures)