



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

January 28, 2013

Ms. Michelle M. Kretz  
Assistant City Attorney  
Office of the City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2013-01580

Dear Ms. Kretz:

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# 477244 (City of Fort Worth Public Information Request No. W021387).

The City of Fort Worth (the "city") received a request for a specified Fort Worth Animal Care and Control Division employee policy. 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 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 inform us, and provide documentation showing, the city received the request for information after a lawsuit styled *Marshall v. City of Fort Worth, Texas*, No. CV12-09-610, was filed in the 271st Judicial District Court of Wise County. Thus, we find litigation involving the city was pending when it received the request. You state the information at issue is related to the pending lawsuit. Based on your representations and our review, we agree this information is related to the pending litigation for purposes of section 552.103. Accordingly, we conclude the city may withhold the submitted information under section 552.103 of the Government Code.

However, we note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. See ORD 551 at 4-5. Therefore, once the information at issue has been obtained by all parties to the litigation through discovery or otherwise, a section 552.103(a) interest no longer exists as to that 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 No. 350 (1982).

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](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 black ink, appearing to read 'KLC', with a long horizontal stroke extending to the right.

Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/bhf

Ref: ID# 477244

Enc. Submitted documents

c: Requestor  
(w/o enclosures)