



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2013

Ms. Danielle R. Folsom
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77011-0368

OR2013-12982

Dear Ms. Folsom:

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# 494482 (Houston GC No. 20508 and 20509).

The City of Houston (the "city") received a request for the vehicle accident log and corrective accident log for a specified time period, and a second request from the same requestor for specified correspondence and paperwork provided to employees regarding grievances for a different time period. You state you will release some information to the requestor.¹ You claim portions of the submitted information are 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 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.

¹In a letter dated May 28, 2013, you withdraw your request for an opinion regarding the second request for information because the city's Solid Waste Department will make this information available to the requestor.

...

(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 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 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). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103.

You inform us, and have provided documentation showing, that lawsuits, styled *Prince v. City of Houston*, Cause No. CV12C0122700, in Justice Court, Precinct 1, Place 2 of Harris County; *Nwobi et al. v. City of Houston*, Cause No. 2011-51141, in the 55th Judicial District Court of Harris County; *Ward v. City of Houston*, Cause No. 2011-47276, in the 61st Judicial Court of Harris County; and *Rodriguez v. City of Houston et al.*, Cause No. 2009-74882, in the 129th Judicial District Court of Harris County were pending, prior to the receipt of the instant request for information. You state the information you have highlighted in the submitted information is related to the pending lawsuits. Based on your representations and our review, we agree that litigation to which the city is a party was pending on the date the city received the request. We further find that the submitted information relates to the pending litigation. Therefore, we conclude the city may withhold the information it has highlighted under section 552.103.

However, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982). As you raise no further exception to disclosure of the remaining information, it must be released.

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 "Kathleen J. Santos". The signature is fluid and cursive, with the first name "Kathleen" being the most prominent part.

Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/som

Ref: ID# 494482

Enc. Submitted documents

c: Requestor
(w/o enclosures)