



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 13, 2013

Mr. Charles S. Frigerio  
Counsel for the City of Universal City  
Law Offices of Charles S. Frigerio  
111 Soledad, Suite 840  
San Antonio, Texas 78205

OR2013-15992

Dear Mr. Frigerio:

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# 499348.

The City of Universal City (the "city"), which you represent, received a request for all records, complaints, and reprimands pertaining to a named officer. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes information subject to section 552.022 of the Government Code. Section 552.022(a)(17) requires disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although you raise section 552.103 of the Government Code, this is a discretionary exception and does not make information confidential under the Act. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary

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<sup>1</sup>Although you raise section 552.1175 of the Government Code in your brief, you have not submitted any arguments explaining the applicability of this exception. Therefore, we assume you have withdrawn this exception. *See* Gov't Code §§ 552.301, .302.

exceptions), 473 (1987) (section 552.103 may be waived). Therefore, the city may not withhold the court-filed document, which we have marked, under section 552.103.

You assert the remaining information not subject to section 552.022(a)(17) of the Government Code is excepted from disclosure under section 552.103 of the Government Code, which provides 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). 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 a showing 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 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and have provided a pleading demonstrating, that a lawsuit styled *Otto M. Thomas v. Corey Vullo*, Cause No. 2013-18087, was filed in District Court of Bexar County, Texas prior to the city's receipt of this request for information. Accordingly, we find that litigation involving the city was pending when the city received the present request for information. We also find the information at issue relates to the pending litigation. Therefore, section 552.103 is generally applicable to the information at issue.

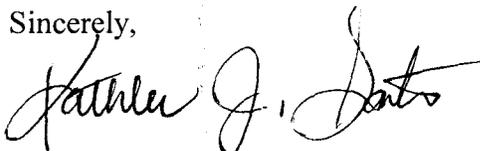
However, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided 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). We note the submitted information includes a citation. Because the citation was provided to the individual cited, the opposing party in the litigation has already seen this information. Thus, the citation, which we have marked, may not be withheld under section 552.103 of the Government Code. Thus, with the exception of the information subject to section 552.022 and the citation, which we have marked for release, the city may withhold the submitted information under section 552.103.<sup>2</sup>

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](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,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/som

Ref: ID# 499348

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note some of the information being released to the requestor contains information to which he has a right of access. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Because such information may be confidential with respect to the general public, if the city receives another request for this information from a different requestor, it must again seek a ruling from this office.