



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 8, 2013

Mr. Jody D. Leake
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2013-17439

Dear Mr. Leake:

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# 501698 (City File No. RGao7).

The City of Corpus Christi (the "city") received a request for history queries and overtime rosters from the city's Fleet Maintenance Department involving a named individual from January 2007 through the end of that individual's employment with the city in November 2008. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code.¹ 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.

¹Although you raise section 552.101 of the Government Code, you do not provide any arguments regarding the applicability of this section. Therefore, we assume you have withdrawn your claim to this exception. See Gov't Code §§ 552.301, .302.

...

(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 at issue. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of 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 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

You state, and have provided documentation demonstrating, that a lawsuit styled *Rose Marie Gaona v. City of Corpus Christi*, Cause No. 09-61272, was pending in Nueces County Court at Law Number 4 prior to the city's receipt of this request for information. You state the submitted information is related to that pending litigation because it pertains to the requestor's job duties and is relevant to her sex discrimination lawsuit. Based on your representations and our review of the submitted information, we find the information at issue is related to litigation, to which the city was a party, that was pending when the request for information was received. We therefore conclude the city may withhold the submitted information under section 552.103 of the Government Code.

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).*

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/som

Ref: ID# 501698

Enc. Submitted documents

c: Requestor
(w/o enclosures)