



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 18, 2013

Mr. Michael Bostic  
Assistant City Attorney  
Office of the City Attorney  
City of Dallas  
1500 Marilla Street, Room 7DN  
Dallas, Texas 75201

OR2013-20062

Dear Mr. Bostic:

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# 506012.

The City of Dallas (the "city") received a request for information pertaining to a specified claim. You state the city will release some of the requested information with redactions pursuant to Open Records Decision No. 648 (2009).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.103 of the Government Code provides in relevant 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

---

<sup>1</sup>Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information under the Act without the necessity of requesting an attorney general decision.

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 section 552.103(a) 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. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *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). *See* ORD 551.

To establish litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing the claim that litigation may ensue is more than mere conjecture." *See* Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See id.* This office has concluded a governmental body's receipt of a claim letter it represents to be in compliance with the notice requirements of the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code, or an applicable municipal ordinance, is sufficient to establish litigation is reasonably anticipated. *See* Open Records Decision No. 638 at 4 (1996).

You assert the submitted information is excepted from disclosure under section 552.103. You inform us that, prior to receipt of the instant request for information, the city received a notice of claim letter from the requestor alleging the city is liable for personal injuries the requestor sustained while attending an event on city property. You do not affirmatively represent to this office that the claim letter complies with the TTCA or an applicable ordinance; therefore, we will only consider the claim letter as a factor in determining whether the city reasonably anticipated litigation over the incident in question. Based on your representations, our review of the submitted information, and the totality of the circumstances, we find the city has established it reasonably anticipated litigation on the date of the request. You assert, and we agree, the submitted information is related to that

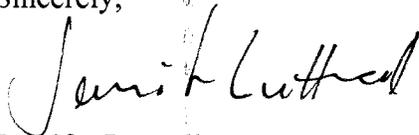
anticipated litigation for purposes of section 552.103. Accordingly, the city may withhold the submitted information under section 552.103 of the Government Code.<sup>3</sup>

Generally, 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 or anticipated 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 or is no longer anticipated. *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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/som

Ref: ID# 506012

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>3</sup>As our ruling is dispositive, we need not consider your remaining argument against disclosure.