



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2014

Ms. Danielle R. Folsom
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2014-20447

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# 542644 (GC. No. 21731).

The City of Houston (the "city") received a request for information pertaining to a named employee of the city's police department. You claim the requested 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.

Initially, we note portions of the submitted information consist of final orders of the city's Civil Service Commission (the "commission"). Section 143.011 of the Local Government Code provides that "[e]ach rule, opinion, directive, decision, or order issued by the commission must be written and constitutes a public record the commission shall retain on file." Local Gov't Code § 143.011(c). Accordingly, we find the commission's final orders are subject to section 143.011 of the Local Government Code and, thus, are public records. Although you raise section 552.103 of the Government Code as an exception to disclosure of this information, we note that as a general rule, the exceptions to disclosure found in the Act are not applicable to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the city must release the commission's final orders, which we have marked, pursuant to section 143.011 of the Local Government Code.

We note some of remaining information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information includes completed evaluations that are subject to section 552.022(a)(1). The city must release the information subject to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* Although you raise section 552.103 of the Government Code for the information subject to section 552.022, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See 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 exceptions), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). As such, the city may not withhold the information subject to section 552.022(a)(1), which we have marked, under section 552.103. As you raise no other exceptions to disclosure for the information subject to section 552.022(a)(1), it must be released. However, we will consider your argument under section 552.103 for the remaining information at issue.

Section 552.103 of the Government Code provides, in relevant 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 has the burden of providing relevant facts and documents to show section 552.103(a) applies 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 requested information 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 at 4.

You state, and have provided a pleading demonstrating, that a lawsuit styled *Kimberly R. Trimmer-Davis v. City of Houston*, Cause No. 2010-11410, was filed in the District Court of Harris County, Texas, 265th Judicial District, prior to the city's receipt of this request for information. You also state, and we agree, the information at issue relates directly to the basis of the pending litigation. Based on your representations and our review, we find litigation was pending when the city received this request for information, and the information at issue is related to the pending litigation for the purposes of section 552.103. Therefore, except for the information subject to section 552.022, the city may withhold the submitted information under section 552.103 of the Government Code.

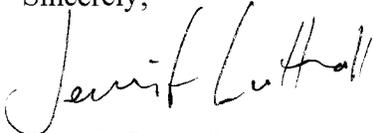
We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. Thus, if the opposing party has seen or had access to information relating to the pending litigation through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103 ends once the related litigation concludes or is no longer pending. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the city must release the commission's final orders, which we have marked, pursuant to section 143.011 of the Local Government Code. The information we have marked must be released pursuant to section 552.022(a)(1) of the Government Code. The city may withhold the remaining information under section 552.103 of the Government Code.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 542644

Enc. Submitted documents

c: Requestor
(w/o enclosures)