



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 5, 2016

Ms. Tracey L. Jennings
Counsel for City of Bowie
Law Office of Tracey Jennings
200 East Tarrant Street
Bowie, Texas 76230

OR2016-00159

Dear Ms. Jennings:

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# 592992.

The City of Bowie (the "city"), which you represent, received a request for the names, applications, and resumes of the top five applicants for a specified position. You claim the submitted information is exempted from disclosure under sections 552.101, 552.103, 552.117, 552.1175, 552.137, and 552.147 of the Government Code.¹ Further, you state release of the submitted information may implicate the privacy interests of the applicants. Accordingly, you state, and provide documentation showing, you notified the applicants of the request for information and of their rights to submit arguments to this office as to why the information at issue should not be released.² *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the requested information were the subject of previous requests for information, in response to which this office issued Open Records Letter No. 2015-26737

¹Although you also raise section 552.107 of the Government Code for the submitted information, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume you no longer assert this exception. *See* Gov't Code §§ 552.301, .302. Further, although you raise section 552.002 of the Government Code, we note this section is not an exception to public disclosure under the Act. Rather, section 552.002 is a provision of the Act that defines "public information" for purposes of the Act.

²As of the date of this letter, we have not received comments from the third parties explaining why the submitted information should not be released.

(2015). In Open Records Letter No. 2015-26737, we concluded the city may withhold the submitted information under section 552.103 of the Government Code. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the city may continue to rely on Open Records Letter No. 2015-26737 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). Next, we address your arguments against the disclosure of the submitted information that is not subject to this prior ruling.

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 provide documentation showing, prior to the city's receipt of the instant request, a lawsuit styled *Scruggs v. City of Bowie*, Case No. 7-14-CV-00123, was filed and is currently pending against the city in the United States District Court for the Northern District of Texas, Wichita Falls Division. Therefore, we agree litigation was pending when

the city received the request. You also state the information at issue pertains to the substance of the lawsuit claims. Based on your representations and our review, we find the information at issue is related to the pending litigation. Therefore, we conclude the city may withhold the remaining information under section 552.103 of the Government Code.³

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 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).

In summary, for the requested information that is identical to the information previously requested and ruled upon by this office, the city may continue to rely on Open Records Letter No. 2015-26737 as a previous determination and withhold or release the identical information in accordance with that ruling. 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 592992

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Parties
(w/o enclosures)