



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 26, 2016

Mr. Quentin D. Price
First Assistant City Attorney
Legal Department
City of Beaumont
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2016-01941

Dear Mr. Price:

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# 595671 (Beaumont TPIA No. 10-64).

The City of Beaumont (the "city") received a request for all complaints submitted against a named member of the Beaumont Fire Department (the "department") over a specified time period.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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

¹We note the requestor has also requested e-mails sent to and received from the named individual during the time period of March 1, 2014, to October 28, 2015. With the exception of any responsive e-mails dated October 28, 2015, the public availability of the requested e-mails will be addressed in this office's identification number 598225. However, the city has not submitted any responsive e-mails dated October 28, 2015. To the extent this information existed when the city received the request for information, we assume the city has released it to the requestor. If the city has not released any such information, the city must do so at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000).

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.

We note the city is a civil service city under chapter 143 of the Local Government Code. You inform us the submitted information pertains to a fire fighter who has filed an appeal of his termination pursuant to chapter 143 of the Local Government Code. We note municipal civil service appeals, such as the one at issue here, are governed by chapter 143 of the Local Government Code. *See* Local Gov't Code §§ 143,057, .127-.131. This office has determined such appeal proceedings constitute litigation for purposes of section 552.103. *Cf.* Open Records Decision No. 588 (1991). You state, and provide documentation demonstrating, the appeal of the termination was pending on the date the city received the request for information. Based on your representations and our review of the documents at issue, we find the city was a party to pending litigation on the date it received the request for information. Further, you state the information at issue relates to the pending appeal. Upon review, we agree the information at issue is related to the pending litigation. Therefore, we conclude the city may withhold submitted information under section 552.103 of the Government Code.²

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

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 595671

Enc. Submitted documents

c: Requestor
(w/o enclosures)