



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 4, 2016

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

OR2016-02694

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# 596798. Because the ruling request involves litigation to which the Open Records Division is a party, preparation of this ruling has been assigned instead to the Opinion Committee.

The City of Houston (the "City") received on November 5, 2015, a request for information including communications related to any replat application submitted on behalf of BWS Humble Center, LP and/or Webster-Chenevert, Ltd., the replat, and any additional information related to the Rosslyn Addition. You claim that a portion of the information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.103 of the Government Code provides as follows:

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Tex. Att'y Gen. ORD-499 (1988) at 6, Tex. Att'y Gen. ORD-497 (1988) at 4. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(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.

TEX. GOV'T CODE § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (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. *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.); Tex. Att'y Gen. ORD-551 (1990) at 4. A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, that a lawsuit styled *The City of Houston, Texas v. Ken Paxton*, Cause No. D-1-GN-15-003528, was pending in the 53rd Judicial District Court of Travis County, Texas, when the City received the instant request for information. We understand the subject of that lawsuit is the extent to which information of a similar type to the information at issue in the instant request constitutes attorney-client communications exempted from disclosure. You state the information at issue in the instant request is related to the pending lawsuit because it is the same type of information that the City argues in the lawsuit is exempted from disclosure as attorney-client communications. Based on your representations, the submitted documentation, and our review of the submitted information, 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, the City may withhold the information at issue under section 552.103(a) of the Government Code. The applicability of section 552.103(a) as recognized in this letter ruling ends once the litigation has concluded. Tex. Att'y Gen. Op. No. MW-575 (1982) at 1; Tex. Att'y Gen. ORD-350 (1982) at 3.

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,



William A. Hill  
Assistant Attorney General  
Opinion Committee

WAH/sdk

Ref: ID# 596798

Enc. Submitted documents

c: Requestor  
(w/o enclosures)