



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 29, 2016

Ms. Anacarolina Estaba
Counsel for the Harris County Sports and Convention Corporation
Gardere Wynne Sewell LLP
1000 Louisiana Street
Houston, Texas 77002

OR2016-19508

Dear Ms. Estaba:

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# 626780.

The Harris County Sports and Convention Corporation (the "corporation"), which you represent, received a request for thirty-eight categories of information pertaining to a specified incident in which the requestor's client was injured. You claim the submitted 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.

Initially, we note you have submitted a representative sample of information responsive to only some portions of the request. You have not submitted any information responsive to the remaining portions of the request seeking, for example, reports or investigation findings relating to the incident, witness statements regarding the incident, and photographs regarding the incident. Although you state you have submitted a representative sample of the requested information, we find the submitted information is not representative of all the information to which the requestor seeks access. Please be advised this open records letter applies to only the types of information you have submitted for our review. This ruling does not authorize the corporation to withhold any information that is substantially different from the types of information you submitted to this office. *See* Gov't Code § 552.302. Therefore, to the extent information responsive to the remaining portions of the request exists and was maintained by the corporation on the date it received the request, we assume the corporation has released

it to the requestor. If the corporation has not released any such information, it must do so. *Id.* §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

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 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). The 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 that (1) litigation is 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.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

You state, and provide documentation showing, a lawsuit styled *Cuomo v. SMG d/b/a SMG Reliant Park*, Cause No. 2014-35933, was pending against the corporation in the 165th District Court of Harris County, Texas, when it received the request for information. Therefore, we agree litigation was pending when the corporation received the request. We also find you have established the submitted information is related to the pending litigation for purposes of section 552.103(a). Therefore, the corporation may withhold the submitted information under section 552.103(a) of the Government Code.

However, once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the

litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 626780

Enc. Submitted documents

c: Requestor
(w/o enclosures)