



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 25, 2017

Mr. Neal Falgoust
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767

OR2017-08755

Dear Mr. Falgoust:

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# 655280 (PIR# 32353 and PIR# 33142).

The City of Austin (the "city") received two requests from different requestors for all documents submitted by Utility Associates, TASER International, and Viewu LLC concerning a specified request for proposals, all electronic or written correspondence, logs of any meetings, all documents reflecting or accounting for travel expenses between the city and Utility Associates, TASER International, and Viewu LLC during a specified period, and seven categories of information pertaining to TASER International, Axon Body Cameras, and Evidence.com.¹ You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.103 of the Government

¹We note the city sought and received clarification of the information requested by the first requestor. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

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).

The city states, and provides documentation demonstrating, that a lawsuit styled *City of Austin v. Utility Associates, Inc.*, Case No. 03-16-00586-CV, was pending in the Third Court of Appeals in Austin, Texas prior to the city's receipt of this request for information. Therefore, we agree litigation was pending on the date the city received the present request for information. You also state the submitted information is related to the pending litigation. Based on your representations and our review, we find the submitted information is related to the pending litigation. Therefore, the city may withhold the submitted information under section 552.103 of the Government Code.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). 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.

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 once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 350 at 3 (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,

A handwritten signature in cursive script, appearing to read "Emily Buchanan", written in dark ink.

Emily Buchanan
Assistant Attorney General
Open Records Division

EB/tdw

Ref: ID# 655280

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)