



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2004

Mayor Jonathan M. Schulz, II
City of Karnes City
314 East Calvert Avenue
Karnes City, Texas 78118-3212

OR2004-0284

Dear Mr. Schulz:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194247.

The City of Karnes City (the "city") received a request for certified copies of the posted agenda and minutes for five city council meetings, the complete application and award of assistance from the Office of Rural Community Affairs dated September 9, 2002, and signed by Mayor Schulz, and the complete application and award of assistance from the Office of Rural Community Affairs dated July 25, 2000, and signed by Mayor Prasek. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that some of the information you seek to withhold consists of agendas and minutes of public meetings of the city. The minutes, tape recordings, and agendas of a governmental body's public meetings are specifically made public by statute. *See* Gov't Code §§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying upon request), 551.043 (notice of meeting of governmental body must be posted in place readily accessible to general public at least 72 hours before scheduled time of meeting), 551.050 (municipality required to post notice of meeting at a place convenient to public in city hall); *see also* Gov't Code § 552.022(a)(15) (information regarded as open to the public is not excepted from disclosure under Public Information Act unless expressly confidential by law). Information made public by statute may not be withheld from the public under any of the Public Information Act's exceptions

to public disclosure. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, the submitted agendas and minutes of public meetings of the city must be released in accordance with the Open Meetings Act. *See* Gov't Code § 551.022. We will address your claimed exceptions for the remaining information.

We note that some of the remaining submitted information is encompassed by section 552.022 of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(10) a substantive rule of general applicability adopted or issued by an agency as authorized by law, and a statement of general policy or interpretation of general applicability formulated and adopted by an agency;

...

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(3), (10), (15). The submitted information includes executed contracts and information in an account relating to the expenditure of public funds. This information must be released under section 552.022(a)(3) unless it is expressly confidential under other law. Furthermore, the information also includes resolutions adopted by the city council; we find that this information falls into the categories described in sections 552.022(a)(10) and (a)(15) and therefore may not be withheld unless expressly confidential under other law. Section 552.103 of the Government Code is a discretionary exception to public disclosure that protect the governmental body's interests and may be waived.¹ As such, section 552.103 is not "other law" that makes information confidential for the purposes

¹*See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally).

of section 552.022. *See* Gov't Code § 552.022; *see also* Open Records Decision No. 551 at 3 (1990) (finding that, because due process required public notice of law, litigation exception is inapplicable to city ordinance). Therefore, the city may not withhold the information that is encompassed by section 552.022 pursuant to section 552.103 of the Government Code.

We next address your claim under section 552.103 with respect to the remaining submitted information. Section 552.103 of the Government Code provides 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.

A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception 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. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *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 552.103(a).

You state that the submitted information is related to a lawsuit filed by the requestor against the city on January 26, 2003 in the 81st Judicial District Court of Karnes County. Based on your representations and our review of the submitted information, we find that the city has established that the information at issue is related to pending litigation in which the city is a party. Accordingly, we agree that the remainder of the information at issue is excepted from disclosure under section 552.103 of the Government Code.

We note, however, that 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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that

has either been obtained from or provided to the opposing party in the pending lawsuit is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the city must release the submitted agendas and minutes of public meetings of the city in accordance with the Open Meetings Act. The city must also release information that is subject to section 552.022(a) of the Government Code. The remainder of the submitted information may be withheld under section 552.103 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 194247

Enc: Submitted documents

c: Mr. Alger H. Kendall, Jr.
620 South Browne
Karnes City, Texas 78118
(w/o enclosures)