



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 24, 2009

Ms. YuShan Chang
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2009-02386

Dear Ms. Chang:

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# 335666.

The City of Houston (the "city") received three requests for information related to the city's inspection of Park Memorial Condominiums, as well as a summary of the permit history at the associated address. You state that you will provide one of the requestors with a portion of the requested information. You claim that the remaining 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 representative sample of information.¹ We have also considered comments from one of the requestors. *See* Gov't Code § 552.304 (interested party may submit written comments concerning disclosure of requested information).

Initially, you inform us that "the Public Works and Engineering Department - Code Enforcement Division [(the "department")] is not the custodian of records for items 1, 3, 4, 5, 7, 8, and 11 of this request". It is not clear from your statement whether you are informing us that the *city* does not maintain the information at issue, or merely whether the *department*, as opposed to some other part of the city, does not maintain it. We note that the Act does not require the city to answer factual questions, conduct legal research, or create responsive information. Likewise, the Act does not require a governmental body to take affirmative

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

steps to create or obtain information that is not in its possession, so long as no other individual or entity holds the information on behalf of the governmental body that receives the request. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). Moreover, administrative inconvenience in responding to a request for information under the Act is not grounds for refusing to comply with the request. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976).

Here, the request at issue was received by the city and was not expressly limited to department records. The fact that the requested information might be maintained by a different department or division within the city than the one that received the request does not mean that the request may be dismissed. *Cf.* Attorney General Opinion JM-266 at 3 (1984) (fact that a request for public records might be more appropriately directed to a different governmental body does not mean that it can be dismissed by a governmental body to which it is properly directed). Thus, since you have not provided any information responsive to those seven categories of the request to our office for review, the city must release such information at this time to the extent such information existed and was maintained by the city on the date the city received the request. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We will now address your argument under section 552.103 of the Government Code for the submitted information. Section 552.103 provides:

(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 city 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, 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, 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). The city must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, that prior to the city's receipt of the present request for information, one of the requestors, along with other individuals, filed a lawsuit against the city. You state that the litigation is still pending. Based on your representations and our review of the submitted information, we conclude that litigation was pending when the city received the present request. You also explain the information at issue relates to the pending litigation because it contains investigative facts that pertain to the basis of the litigation. Upon review of the submitted information, we agree that it is related to the litigation for purposes of section 552.103. Therefore, the city may withhold the information at issue pursuant to section 552.103 of the Government Code.

We note that once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. See Open Records Decision Nos. 349 (1982), 320 (1982). Further, the applicability of section 552.103(a) ends once the litigation has 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 335666

Enc. Submitted documents

c: Requestor (3)
(w/o enclosures)