



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2009

Ms. Rebecca Brewer
Abernathy, Roeder, Boyd & Joplin, P.C.
Attorneys for the City of Weston
P.O. Box 1210
McKinney, Texas 75070-1210

OR2009-06556

Dear Ms. Brewer:

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# 343102.

The City of Weston (the "city"), which you represent, received a request for all correspondence between the city, the Texas Commission on Environmental Quality (the "TCEQ"), and the city's engineer consultants pertaining to the certificate of convenience and necessity ("CCN"), wastewater treatment plant and related subjects for a specified time period and the petition requesting de-annexation of Pecan Farms. You claim 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 a portion of the submitted information is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

Without limiting the amount or kind of information that is public information under this chapter, 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:

...

(18) a settlement agreement to which a governmental body is a party[.]

Gov't Code § 552.022(a)(18). The submitted information contains a settlement agreement to which the city is a party. Therefore, this settlement agreement must be released unless the information is expressly made confidential under other law. You claim the submitted settlement agreement is excepted from disclosure under section 552.103 of the Government Code. However, section 552.103 is a discretionary exception that protect a governmental body's interests and is therefore not "other law" for purposes of section 552.022(a)(18). *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 section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(18). As you raise no other exception to disclosure, the city must release the submitted settlement agreement.

Next, we will address your argument under section 552.103 of the Governmental Code for the information not subject to section 552.022. Section 552.103 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.

Gov't Code § 552.103(a), (c). The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). 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 that (1) litigation was pending or reasonably anticipated on the date that the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *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.); ORD 551 at 4. A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state a lawsuit styled *Land Advisors, Ltd. v. City of Weston, Texas*, Cause No. 401-3363-07, was filed against the city in the 401st Judicial District Court of Collin County, Texas. Based on your representations and our review of the submitted information, we conclude litigation was pending when the city received the request. You make a general assertion that the submitted information is related to the pending litigation. However, you have not provided copies of the relevant proceedings, nor have you sufficiently explained how the information not subject to section 552.022 relates to the pending litigation for the purposes of section 552.103. *See* Gov't Code § 552.301(e)(1) (requiring governmental body to explain applicability of raised exception); *see also* Open Records Decision Nos. 551 at 5 (1990) (attorney general will determine whether governmental body has reasonably established that information at issue is related to litigation), 511 at 2 (1988) (information "relates" to litigation under statutory predecessor if its release would impair governmental body's litigation interests). Therefore, the city has failed to establish section 552.103 is applicable to the information not subject to section 552.022. Accordingly, the city may not withhold the information not subject to section 552.022 under section 552.103. As you have raised no further exceptions to disclosure, the information not subject to section 552.022 must be released.

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,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/dls

Ref: ID# 343102

Enc. Submitted documents

c: Requestor
(w/o enclosures)