



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2009

Ms. Yushan Chang
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2009-13958

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# 357244.

The City of Houston (the "city") received several requests from the same requestor for any documents regarding any construction permit issued by the city for LED signs at multiple specified locations. You state the city does not possess any responsive information regarding some of the requested locations.¹ You claim that 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 information.

You claim Exhibits 2a, 3a, 3b, 4a, 4b, 5a, 5b, 6a, 7b, 8a, and 8b are excepted from disclosure under section 552.103 of the Government Code, which 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

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

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 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, 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 inform us, and provide documentation showing that, prior to the city's receipt of the present requests for information, a lawsuit styled *Garrett Operators, Inc. v. City of Houston*, cause number 930539, was filed and is currently pending before the Harris County Civil Court at Law No. 4. We therefore agree that litigation was pending on the date the city received the request. Furthermore, you state the lawsuit pertains to permitting for an LED sign. Thus, we find that the information at issue is related to the pending proceedings for purposes of section 552.103. Accordingly, the city may generally withhold the information in Exhibits 2a, 3a, 3b, 4a, 4b, 5a, 5b, 6a, 7b, 8a, and 8b pursuant to section 552.103.

However, you state the plaintiff has served the city with multiple discovery requests. We note that once the information at issue has been obtained by all parties to the anticipated 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). Thus, any submitted information that has either been obtained from or provided to the opposing parties pursuant to the discovery requests in the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. 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). Therefore, the information contained in Exhibits 2a, 3a, 3b, 4a, 4b, 5a, 5b, 6a, 7b, 8a, and 8b may be withheld under section 552.103 of the Government Code. However, as you raise no exceptions to the disclosure of the remaining responsive information in Exhibits 2b and 3c, this information must be released to the requestor.

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, toll free, at (888) 672-6787.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID# 357244

Enc. Submitted documents

c: Requestor
(w/o enclosures)