



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 9, 2009

Ms. Julie V. Pandya
Assistant City Attorney
City of Cedar Park
600 North Bell Boulevard
Cedar Park, Texas 78613

OR2009-14271

Dear Ms. Pandya:

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# 357975.

The City of Cedar Park (the "city") received a request for all records for a specified time period related to the possible relocation of the Twin Creeks Raw Water Intake Barge. You state the city has provided some of the requested information to the requestor. You claim the submitted e-mails and attachments, spreadsheets, photographs, and letters are excepted from disclosure under sections 552.103, 552.105, 552.107, and 552.111 of the Government Code. You also claim releasing a portion of the submitted information may implicate the proprietary interests of The Wallace Group, Inc., and HDR Engineering, Inc. Accordingly, you state, and have provided documentation showing, you notified these companies of the request and of each company's right to submit arguments to this office as to why the submitted information pertaining to them should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain

circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.103 of the Government Code 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). 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 (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. *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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, the city received the request for information after a condemnation lawsuit styled *City of Cedar Park v. Marlon L. Coplin*, Cause No. C-1-CV-09-007183, was filed by the city in Probate Court of Travis County, Texas. Based upon your representation and our review, we conclude litigation involving the city was pending when the city received the request. You also state the submitted information is related to the pending litigation because the information helps form the basis of the condemnation lawsuit. Based on your representations and our review, we find the submitted information is related to the pending litigation for the purposes of section 552.103. We,

¹We 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.

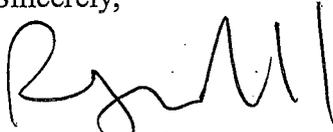
therefore, conclude the city may withhold the information at issue under section 552.103 of the Government Code.²

We note, however, 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). Thus, any information at issue that has either been obtained from or provided to all opposing parties 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).

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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/dls

Ref: ID# 357975

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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Mr. Michael Murphey, R. P. L. S.
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