



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2009

Ms. Kristina Laurel Hale
Assistant City Attorney
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579

OR2009-15104

Dear Ms. Hale:

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# 359225.

The City of Laredo (the "city") received a request for twelve categories of information pertaining to the arrest and termination of a named city employee. You state you will release portions of the responsive information. You also state you have no information responsive to portions of the request.¹ You claim 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.

Initially, we address the city's argument that a portion of the request requires the city to answer questions, make comparisons, and draw conclusions. Additionally, you state a portion of the request seeks a list that does not exist and producing one would require an extensive amount of time and research. We agree the Act does not require the city to answer factual questions, conduct legal research, or create responsive information. See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, the Act does not require a governmental body to take affirmative steps to create or obtain information that is

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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). Therefore, to the extent the city either maintains or has access to any additional information that would be responsive to the instant request, any such information must be released. *See* Gov't Code §§ 552.301(a), .302; 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 under circumstances).

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.

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. *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 have provided documentation showing, that prior to the city's receipt of this request, a civil lawsuit styled *Robert Leza v. City of Laredo*, Civil Action No. 5:09-

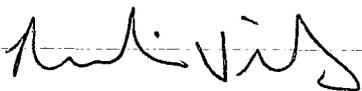
CV-00065 was filed in the United States District Court for the Southern District of Texas, Laredo Division. You state the lawsuit is pending. Thus, based on your representations and our review, we find litigation was pending on the date the city received the request for information. The plaintiff in the litigation is the former city employee at issue, and the submitted information pertains to his termination. The manner in which he was terminated is the central issue in the pending litigation. Therefore, we find the information relates to the pending litigation. Accordingly, the city may generally withhold the submitted information pursuant to section 552.103 of the Government Code.

As you acknowledge, once information has been obtained by the opposing party in the pending 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 all parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. In this instance, it appears a portion of the submitted information has already been seen by the opposing party in the pending litigation. Thus, to the extent the opposing party in the pending litigation has already seen or had access to any portion of the submitted information, such information may not be withheld under section 552.103. We further note 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). Accordingly, with the exception of any information that has already been seen by the opposing party, the submitted information may be withheld under section 552.103 of the Government Code.

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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/cc

Ref: ID# 359225

Enc. Submitted documents

c: Requestors
(w/o enclosures)