



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 4, 2010

Mr. Alfredo Castaneda  
Executive Director  
Housing Authority of the City of Carrizo Springs  
207 North Fourth Street  
Carrizo Springs, Texas 78834

OR2010-00025

Dear Mr. Castaneda:

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# 366382.

The Housing Authority of Carrizo Springs (the "authority") received a request for the bank statements for Carrizo Springs Affordable Housing, Inc. ("Nonprofit") over a specified time period. You claim that the requested information is not subject to the Act. In the alternative, you claim the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor states in his request that the authority may "partially redact account numbers or other account information that may be considered excepted from disclosure." Accordingly, the redacted portions of the submitted account information are not responsive to the instant request for information. The authority need not release non-responsive information in response to this request, and this ruling will not address the public availability of such information.

You argue that the requested information is not subject to the Act because Nonprofit is not a governmental body. We note the Act is applicable to "public information." *See id.* § 552.021. Section 552.002 of the Act provides that "public information" consists of "information that is collected, assembled, or maintained under a law or ordinance or in

connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Although you argue that the information is not subject to the Act because Nonprofit is not a governmental body, we note that the request for information was sent to the authority. Furthermore, the requested information is in the physical possession of the authority, which, as you acknowledge, is a governmental body as defined by section 552.003 of the Government Code. You also argue that the requested information is related to pending litigation involving the authority. Therefore, we conclude that the requested information is subject to the Act and must be released, unless the authority demonstrates that the information falls within an exception to public disclosure under the Act. *See* Gov't Code §§ 552.006, .021, .301, .302. Thus, we will consider the authority's argument against disclosure of the submitted information.

Section 552.103 of the Government Code provides in part 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.

The governmental body 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 is 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). The governmental body 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 authority's receipt of the request for information, the authority was named as a defendant in a lawsuit filed by the requestor's client, styled *Ricky Alaniz v. Housing Authority of Carrizo Springs and Alfredo*

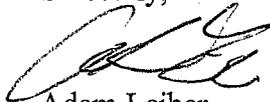
*Castaneda*, Cause No. 08-12-10914-DCV, filed in the 293<sup>rd</sup> Judicial District Court of Dimmitt County. We therefore agree that litigation was pending on the date the authority received the request. Furthermore, you state that the submitted information relates to the pending litigation. You have provided information that indicates the information at issue was part of a discovery request in the pending litigation. Therefore, upon review, we agree that the submitted information is related to the pending litigation for purposes of section 552.103. Therefore, the authority may withhold the submitted information pursuant to section 552.103 of the Government Code.

We note, however, that once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note that the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (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](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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/rl

Ref: ID# 366382

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)