



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2010

Ms. Joanna Lippman Salinas
Fletcher, Farley, Shipman & Salinas
823 Congress Avenue, Suite 1300
Austin, Texas 78701

OR2010-00507

Dear Ms. Salinas:

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# 366762 (TML 9704).

The City of Giddings (the "city"), which you represent, received a request for documents related to a specified address. 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 representative sample of the requested information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You assert that the submitted information is excepted from disclosure under section 552.103 of the Government Code, which provides in relevant part:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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.

Id. § 552.103(a), (c). The governmental body claiming this exception bears the burden of providing relevant facts and documents to demonstrate the applicability of the exception. 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).

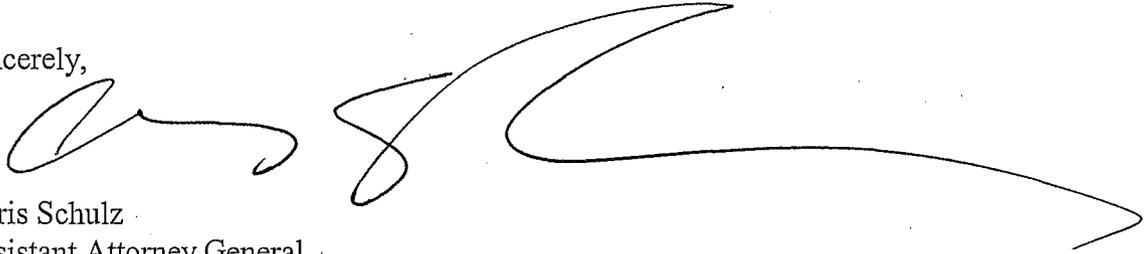
You state, and provide documentation showing, that the city is involved in a lawsuit with the requestor's client. You state the case is styled *John L. Wiley and Randi Wiley vs. The City of Giddings* and is pending before the 3rd Court of Appeals. You indicate the lawsuit was pending on the date the city received the request. Thus, based on your representations and our review of the requested information, we find that litigation was pending on the date the city received the request for information. You state the submitted information pertains to the city's sewer line at the specified address. You state re-routing the line was a summary judgment issue in the pending litigation. Based on your representations, we also conclude that the information at issue relates to the pending litigation because the information pertains to the basis of the litigation. Therefore, the city may withhold the submitted information under section 552.103 of the Government Code.

Generally, however, once information has been obtained by all parties to the 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 the opposing party 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 been concluded or is no longer pending. Attorney General Opinion MW-575 (1982); 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,

A handwritten signature in black ink, appearing to read 'Chris Schulz', is written over a large, faint, stylized watermark or background graphic that resembles a large, sweeping letter 'S' or a similar shape.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 366762

Enc. Submitted documents

cc: Requestor
(w/o enclosures)