



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 24, 2010

Mr. Ben Stool  
Assistant District Attorney  
Dallas County  
411 Elm Street, 5th Floor  
Dallas, Texas 75202

OR2010-02760

Dear Mr. Stool:

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# 371155.

Dallas County (the "county") received a request for a list of companies that had placed bids for a specified county service. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative samples of information.<sup>2</sup>

Initially, we note the instant request asks only for a list of companies that placed bids for towing and vehicle storage facilities ("VSF") for the county. However, the submitted information consists of a representative sample of the requested list, as well as representative samples of bid proposals pertaining to towing and VSF. Accordingly, the submitted bid

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<sup>1</sup> Although you cite section 262.0295 of the Local Government Code for your argument to withhold a portion of the submitted information, we understand you to raise section 552.101 of the Government Code in conjunction with section 262.0295, as this is the proper exception for your argument.

<sup>2</sup> We 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.

proposals, which we have marked, are not responsive to the instant request for information. Our ruling does not address this non-responsive information, and the county need not release this information in response to the request.

Next, we address your assertion that the responsive portion of the submitted information is confidential under section 552.103 of the Government Code. Section 552.103 provides in 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 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 is pending or reasonably anticipated on the date the governmental body receives the request for information, and (2) the information at issue is related to that litigation. *See Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *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). *See* ORD 551 at 4.

You inform us that the information at issue relates to a pending lawsuit styled *Milad Nasrallah, Sr. v. Dallas County, Texas*, Cause No. DC-09-15537. You further inform us the information at issue and the lawsuit both involve the same issues regarding the county's contracts for towing and VSF. You state, and provide supporting documentation showing, that this lawsuit was filed prior to the county's receipt of the instant request. Based on your representations and our review, we agree that the information at issue relates to pending

litigation for purposes of section 552.103. Accordingly, the county may withhold this information, which we have marked, under section 552.103 of the Government Code.<sup>3</sup>

We note, however, that once information has been obtained by all parties to the anticipated 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). Further, the applicability of section 552.103(a) ends once the litigation has been concluded or is no longer reasonably anticipated. 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](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,



James McGuire  
Assistant Attorney General  
Open Records Division

JM/cc

Ref: ID# 371155

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup> As our ruling is dispositive, we do not address your remaining argument against disclosure.