



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 16, 2010

Ms. Helen Valkavich  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2010-05413

Dear Ms. Valkavich:

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# 377467 (COSA File No. 10-0197).

The City of San Antonio (the "city") received a request for notices, agenda, minutes, voting record, and orders used in conjunction with the 2008 Dangerous Structure Demolition Board ("DSDB") public hearing regarding a specified property; the documents related to the city's efforts to notify interested parties of the hearing and subsequent order; the documents and evidence considered, presented, or offered during the hearing; and any audio, video, or other record of the hearing. You claim the city will provide records from the DSDB meetings to the requestor. You claim that the remaining 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 note the submitted information includes public notices of DSDB's meeting regarding the property at issue. Notices of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See* Gov't Code §§ 551.041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), 551.043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the city must

submitted notices of public meetings, which we have marked, pursuant to section 551.041 of the Government Code.

The submitted information also includes numerous documents pertaining to the real property at issue that reflect that they have been recorded in the Bexar County Clerk's Office. Section 13.002(2) of the Property Code states that "an instrument that is properly recorded in the proper county is subject to inspection by the public." Prop. Code § 13.002(2). As noted above, as a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision No. 161 (1977) (conveyances specifically made public by statute not protected by predecessor to section 552.103). We have marked the documents that are subject to section 13.002 of the Property Code and, thus, may not be withheld under section 552.103. Accordingly, the documents we have marked under section 13.002 of the Property Code must be released.

We also note that a portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (17). The submitted information includes completed reports and court-filed documents. These documents, which we have marked, fall within the purview of subsections 552.022(a)(1) and 552.022(a)(17), respectively. The city may only withhold the information subject to subsection 552.022(a)(1) if it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under other law. The city may only withhold the information subject to subsection 552.022(a)(17) if it is confidential under other law. You do not raise section 552.108 as an exception to disclosure. You claim the information subject to section 552.022 is excepted from disclosure under section 552.103 of the Government Code. However, this section is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000)

(discretionary exceptions generally). Therefore, the city may not withhold the information subject to section 552.022 under section 552.103 of the Government Code. However, we will consider your claim under section 552.103 for the remaining information that is not subject to section 552.022.

Section 552.103 of the Government Code provides in relevant 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.

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 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 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. *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.*); ORD 551 at 4. A governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

You state, and have provided documentation showing, that prior to the city's receipt of the request, a lawsuit styled *D'Hanis State Bank v. City of San Antonio*, 2010 CI- 01778, was filed and is currently pending in the 73rd Judicial District Court in Bexar County, Texas. Therefore, we agree that litigation was pending on the date the city received the present request for information. Further, you state that the documents responsive to the request are related to the lawsuit pending before the court. Thus, based on the city's representation and our review, we agree that the remaining information relates to a pending litigation.

Accordingly, we conclude that section 552.103 of the Government Code generally applies to the remaining information.

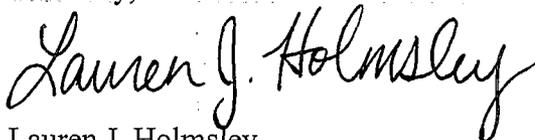
We note that the purpose of this exception is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, when the opposing party has seen or had access to information relating to litigation, through discovery or otherwise, there is no interest in withholding that information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). In this instance, a portion of the remaining information is publicly available online. Further, the opposing party may have already seen or had access to some of the remaining information at issue. Accordingly, any information that the opposing party has seen or had access to may not be withheld under section 552.103. However, the city may withhold under section 552.103 any information that has not been seen by the opposing party. We note that 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).

In summary, with the exception of the information we have marked for release and any information that the opposing party has seen or had access to, the city may withhold the submitted information pursuant to section 552.103.

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\\_ori.php](http://www.oag.state.tx.us/open/index_ori.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,



Lauren J. Holmsley  
Assistant Attorney General  
Open Records Division

LJH/jb

Ref: ID# 377467

Enc. Submitted documents

c: Requestor  
(w/o enclosures)