



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2010

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

OR2010-05889

Dear Ms. Rai:

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# 376948 (COSA File No. 10-0170).

The City of San Antonio (the "city") received a request for all information regarding specified properties that were ordered demolished by the city's Dangerous Structure Determination Board ("DSDB") during the past two years.¹ You state the city has provided some of the requested information to the requestor. You claim the submitted court documents, letters, property inspection records, and photographs are excepted from disclosure under sections 552.103 and 552.111 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains litigation petitions and other documents filed with a court. Court-filed documents are expressly public under section 552.022(a)(17) of the Government Code. Gov't Code § 552.022(a)(17). Such information must be released unless it is expressly confidential under other law. You claim the court-filed documents are excepted from disclosure under section 552.103 of the Government Code. However, this

¹You state the city received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²Although you also assert section 552.107 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume you have withdrawn your claim under this exception. *See* Gov't Code §§ 552.301, .302.

section is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *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 submitted court-filed documents under section 552.103 of the Government Code. As you have claimed no other exceptions to disclosure for this information, it must be released.

You assert the remaining information is excepted under section 552.103 of the Government Code, which provides:

(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 was 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You explain the course of action for an aggrieved property owner to appeal a DSDB demolition order is to file a petition for writ of certioari in district court pursuant to section 214.0012 of the Local Government Code. You state, and provide documentation showing, the city received the request for information after several appeal lawsuits were filed

by aggrieved property owners.³ Based on your representation and our review, we conclude litigation involving the city was pending when the city received the request. You also state the remaining information is related to the pending litigation because it pertains to the issues that help form the bases of the lawsuits. Based on your representations and our review, we find the remaining information is related to the pending litigation for the purposes of section 552.103.

We note, however, that 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 litigation is not excepted from disclosure under section 552.103(a). In this instance, all of the property owners with whom litigation is pending have already seen the submitted letters and other correspondence sent to or received from them regarding the ordered demolitions. Therefore, because the opposing parties in each of the pending lawsuits has seen this information, it may not be withheld under section 552.103 of the Government Code. However, the rest of the information may be withheld under section 552.103 of the Government Code.⁴

We note the remaining letters and correspondence seen by the opposing parties contain information that may be protected under common-law privacy and copyright law. Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."⁵ Gov't Code § 552.101. This exception encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked

³The lawsuits are styled *Deepak Land Trust v. City of San Antonio*, Cause No. 2008-CI-06320, 37th District Court, Bexar County, Texas; *Clifford Brown v. City of San Antonio*, Cause No. 2009-CI-09518, 45th District Court, Bexar County, Texas; *Edward Slavin v. City of San Antonio*, Cause No. 2009-CI-08709, 225th District Court, Bexar County, Texas; and *Alicia Wilson Kuykendall v. City of San Antonio*, Cause No. 2009-CI-18878, 150th District Court, Bexar County, Texas.

⁴As our ruling is dispositive for this information, we need not address your remaining argument against disclosure for portions of this information.

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information regarding a specific medical condition. We find this information is highly intimate or embarrassing and not of legitimate public concern. Thus, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

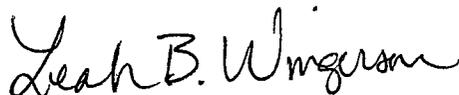
Some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Accordingly, the remaining information must be released in accordance with copyright law.

In summary, with the exception of the letters and other correspondence seen by the opposing parties, the city may withhold under section 552.103 of the Government Code the submitted information not subject to section 552.022(a)(17) of the Government Code. The city must withhold the medical information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released, but any information protected by copyright must be released in accordance with copyright law.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 376948

Enc. Submitted documents

c: Requestor
(w/o enclosures)