



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 11, 2010

Ms. Candice M. De La Garza  
Ms. Evelyn Njuguna  
Assistant City Attorneys  
City of Houston Legal Department  
P.O. Box 368  
Houston, Texas 77001-0368

OR2010-06723

Dear Ms. De La Garza and Ms. Njuguna:

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# 378911.

The City of Houston (the "city") received a request for layoff plan documents for the city's Housing and Community Development Department, including organizational charts showing staff before and after the layoff and an affirmative action report. You state a portion of the responsive information has been made available to the requestor. 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 information.

Initially, we note that a portion of the submitted information appears to be the same information at issue in a previous request, as a result of which this office issued Open Records Letter No. 2008-10441 (2008). In that ruling, we determined that the city may withhold the submitted organizational charts under section 552.103 of the Government Code. As we have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based, we conclude that the city may rely on Open Records Letter No. 2008-10441 as a previous determination and continue to treat any previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (outlining elements of first type of previous determination). To the extent that the submitted

information is not the same information ruled upon in Open Records Letter No. 2008-10441, we will consider your argument against disclosure.

Section 552.103 of the Government Code 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 sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

You state, and provide documentation showing, that a lawsuit involving the city's alleged employment discrimination against the requestor was filed prior to the city's receipt of this request and is currently pending in the United States District Court for the Southern District of Texas, Houston Division. You have provided an affidavit from the attorney representing the city in the litigation which states that the submitted information is related to the pending litigation because it pertains to the claims in the lawsuit. Accordingly, we find that the city was a party to pending litigation when the city received this request for information and that the information at issue relates to the pending litigation. Therefore, we conclude 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. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either

been obtained from or provided to all parties to 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. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the city may rely on Open Records Letter No. 2008-10441 as a previous determination and continue to treat any previously ruled upon information in accordance with that ruling. The city may withhold the remaining information under section 552.103 of the Government Code.

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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eeg

Ref: ID# 378911

Enc. Submitted documents

c: Requestor  
(w/o enclosures)