



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2010

Ms. Barbara E. Roberts
Chamberlain, Hrdlicka, White, Williams & Martin
1200 Smith Street, Suite 1400
Houston, Texas 77002

OR2010-11370

Dear Ms. Roberts:

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# 388576.

The City of Bellaire (the "city"), which you represent, received four requests from three different requestors for information pertaining to two named individuals and a specified criminal case. The first requestor seeks (1) all e-mail communications pertaining to the two named individuals sent from the public to the city, its police department, the mayor's office, and the city manager's office over a specified time period; and (2) any voice-mails left with the city pertaining to the two named individuals over a specified time period. The second requestor seeks a copy of a specified press release pertaining to the criminal case and all associated drafts and working notes of the specified press release. The third requestor seeks all communications pertaining to the specified criminal case to, from, or between the city manager, mayor, city council members, and police department employees over a specified time period.¹ You claim the requested information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹We note that the city asked for and received clarification regarding requests from the first and third requestors. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

Initially, we note one of the submitted e-mails, which we have marked, is not responsive to one of the first requestor's requests because it falls outside of the time period specified by the first requestor in his request. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release that information in response to this request. Accordingly, the city should withhold the information we have marked as non-responsive from the first requestor.

You claim the responsive information is subject to section 552.103 of the Government Code, which 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 requests, the city was named as a defendant in a lawsuit styled *Tolan v. Cotton*, that is currently pending in the United States District Court for the Southern District of Texas, Houston Division. Therefore, we agree that litigation was pending on the date the city received the present requests for information. Further, you state the information at issue is directly related to the facts and the city's defense of the ongoing lawsuit. Based on your

representations and our review, we agree the information at issue relates to the pending litigation. Therefore, the city may withhold the responsive information under section 552.103 of the Government Code.²

However, once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the 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 concluded. *See* Attorney General Opinion MW-575 (1982); *see also* 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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/em

Ref: ID# 388576

Enc: Submitted documents

c: Requestors
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining claims against disclosure.