



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 5, 2010

Ms. Charlotte L. Staples  
Taylor Olson Adkins Sralla Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2010-11884

Dear Ms. Staples:

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# 389433.

The City of North Richland Hills (the "city"), which you represent, received a request for all correspondence, e-mails, meeting notes, telephone conversation notes, and tape recordings regarding the Liberty Park Lake project or Graham Associates from May 1, 2007 to May 14, 2010, as well as all city council agendas and meeting minutes regarding the Liberty Park Lake project from May 1, 2007 to May 14, 2010. 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 some of the information, which we have marked, is not responsive to the present request because it was created outside the requested time period. The city need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, we note portions of the submitted information consist of the minutes and agendas of public meetings of the city council. The minutes and agendas of a governmental body's public meetings are specifically made public under the Open Meetings Act, chapter 551 of the Government Code. *See Gov't Code §§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying upon request), .043 (notice of meeting of governmental body must be posted in a place readily*

accessible to general public at least 72 hours before scheduled time of meeting), .053-.054 (district governing bodies required to post notice of meeting at a place convenient to the public in administrative office of district). Accordingly, the minutes and agendas of the public meetings, which we have marked, must be released in accordance with section 551.022 of the Government Code.

Next, we note some of the responsive information is subject to section 552.022 of the Government Code. This section provides, in pertinent part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

*Id.* § 552.022(a)(3). In this instance, the submitted information contains a signed contract and documents related to the expenditure of public funds. This information, which we have marked, is subject to section 552.022(a)(3) of the Government Code. Therefore, this information must be released under section 552.022 unless it is confidential under other law. You argue this information is excepted from disclosure by section 552.103 of the Government Code. However, section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *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). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022(a)(3). Therefore, the city may not withhold the information we have marked under section 552.103. As you raise no other exception to the disclosure of the information subject to section 552.022, it must be released. However, we will address your argument under section 552.103 for the information that is not subject to section 552.022.

Section 552.103 of the Government Code provides in relevant 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). The governmental body claiming this exception bears the burden of providing relevant facts and documents to demonstrate the applicability of the exception. The test for meeting this burden is a showing that (1) litigation is 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. at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. See Open Records Decision No. 452 at 4 (1986). When the governmental body is the prospective plaintiff in litigation, the evidence of anticipated litigation must at least reflect that litigation involving a specific matter is “realistically contemplated.” See Open Records Decision No. 518 at 5 (1989); see also Attorney General Opinion MW-575 (1982) (investigatory file may be withheld if governmental body’s attorney determines that it should be withheld pursuant to section 552.103 and that litigation is “reasonably likely to result”).

You contend that the remaining responsive information relates to a lawsuit the city plans to initiate against the requestor’s company. You state, and provide documentation showing, that the city began preparation for this lawsuit prior to the city’s receipt of the present request for information. Based on your representations and our review, we find the city reasonably anticipated litigation on the date the city received the request for information. We also find the responsive information is related to the anticipated litigation. Accordingly, we find section 552.103 is generally applicable to the remaining responsive information.

We note, however, that once the information has been obtained by all parties to the anticipated litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103, and it must be disclosed. In this instance, some of the submitted information has been obtained from or provided to the opposing party to the anticipated litigation. We have marked a representative sample of this information. Therefore, the information we have indicated may not be withheld under section 552.103.

However, the remaining information at issue may be withheld under section 552.103 of the Government Code. We note that the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (1982).

We note the information that must be released contains personal e-mail addresses that are subject to section 552.137 of the Government Code.<sup>1</sup> Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See *id.* § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). We have marked a representative sample of this information. Accordingly, the city must withhold the e-mail addresses we have indicated under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their disclosure.<sup>2</sup>

In summary, the minutes and agendas of the public meetings, which we have marked, must be released in accordance with section 551.022 of the Government Code. The city must also release the information we have marked under section 552.022(a)(3) of the Government Code. With the exception of the information that has been seen by the opposing party to the anticipated litigation, the city may withhold the remaining responsive information under section 552.103 of the Government Code. In releasing information that has been seen by the opposing party, the city must withhold the e-mail addresses we have indicated, unless the owners have affirmatively consented to their disclosure.

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

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<sup>1</sup>The 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).

<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in black ink, appearing to read "Jennifer Burnett", with a long horizontal flourish extending to the right.

Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 389433

Enc. Submitted documents

c: Requestor  
(w/o enclosures)