



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2010

Mr. David Daugherty
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2010-15703

Dear Mr. Daugherty:

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#396961 (C.A. File No. 10GEN1485).

The Harris County Architecture and Engineering Division of the Public Infrastructure Department (the "county") received a request for the current and last known addresses for two named individuals. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.103, 552.117, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor only seeks the addresses pertaining to the two named individuals. Thus, only the submitted addresses, which we have marked, are responsive to the request. The remaining information is not responsive. This ruling does not address the public availability of non-responsive information, and the county is not required to release non-responsive information in response to this request.

Section 552.103 of the Government Code 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). 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. 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 state and provide documentation showing that prior to the county's receipt of this request, the requestor filed a lawsuit in the 189th Judicial District Court of Harris County, Texas styled *Sasson v. Shatte, et al.*, cause no. 2010-08868, and named both the county and the individuals whose information is at issue as defendants. You state the individuals are former county employees, and you have established that the county is representing one of these individuals in his capacity as a county employee. You assert the information at issue is related to this pending litigation because it concerns the two former county employees and that public disclosure of this information could "significantly impair the ability of the county to properly investigate this matter or obtain a fair trial." Upon review, we agree that section 552.103 of the Government Code is applicable in this instance. Therefore, the county may withhold the responsive information under section 552.103 of the Government Code.¹

We note that 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* ORD 551 at 4-5. If the opposing party has seen or had access to information relating to litigation, through discovery or otherwise, then there is no interest in withholding that information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We further note the applicability of section 552.103 ends once the related litigation concludes or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

¹As our ruling is dispositive, we need not address your remaining arguments against 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, 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 396961

Enc. Submitted documents

c: Requestor
(w/o enclosures)