



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 26, 2010

Ms. Helen Valkavich
Assistant City Attorney
City of San Antonio
P.O. Box 83966
San Antonio, Texas 78283

OR2010-16175

Dear Ms. Valkavich:

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# 398051 (COSA File No. 10-1280).

The City of San Antonio (the "city") received a request for all license applications to authorize the owner of a specified property to operate a mobile home living park and all correspondence and records pertaining to the city's response to such applications. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that portions of the submitted information fall within the scope of section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). Section 552.022(a)(3) provides for required disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body" unless the information is expressly confidential under other law. *Id.* § 552.022(a)(3). We have marked completed reports made for and by the city and invoices that indicate they have been paid to the city. We note that you do not claim an exception under section 552.108 for the marked completed reports subject to section 552.022(a)(1). Although you seek to withhold all of the information subject to section 552.022 under section 552.103 of the Government Code, that section 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 Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to Gov't Code § 552.103 could be waived). As such, section 552.103 is not “other law” that makes information expressly confidential for the purposes of section 552.022. Therefore, the city may not withhold any of the marked information that is subject to section 552.022 under section 552.103. As you raise no further exceptions to disclosure of this information, it must be released to the requestor.

You claim the remaining information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 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 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 is pending or reasonably anticipated on the date the governmental body receives the request for information, and (2) the information at issue is related to that litigation. *See 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.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

You state the information at issue relates to a lawsuit pending in the United States District Court for the Western District of Texas, San Antonio Division styled, *Rabbi Mark Abdelhak v. City of San Antonio*, Cause Nos. SA-CV-00804 FB and EP 09 CV 0344. You further inform us the information at issue and the lawsuit both concern issues regarding license applications and the city's response to such applications. You state, and provide supporting documentation showing, this lawsuit was filed prior to the city's receipt of the instant request. Based on your representations and our review, we agree the information at issue

relates to pending litigation for purposes of section 552.103. Accordingly, the city may generally withhold the remaining information under section 552.103 of the Government Code.¹

We note, 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. Open Records Decision Nos. 349 (1982), 320 (1982). We note that it appears some of the submitted information, including notices of violations, has been provided to the other party in the litigation. Thus, to the extent any of the information at issue has either been obtained from or provided to the opposing party in the pending litigation, it is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the city must release the information we have marked under sections 552.022(a)(1) and 552.022(a)(3) of the Government Code. To the extent the remaining information has not been obtained from or provided to the other party in the pending litigation, 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, 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

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¹As our ruling is dispositive, we need not address your remaining argument against disclosure for portions of this information.

Ref: ID# 398051

Enc. Submitted documents

cc: Requestor
(w/o enclosures)