



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 26, 2010

Mr. John T. Reynolds  
Corporate Counsel  
San Antonio Water System  
P.O. Box 2449  
San Antonio, Texas 78298-2449

OR2010-16205

Dear Mr. Reynolds:

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# 399622.

The San Antonio Water System ("SAWS") received a request for certified copies of (1) any agreements, drawings, or other documents pertaining to the drainage easement secured by SAWS from Culebra 1604 Joint Venture circa 1998; (2) the SAWS Property Plat Map depicting #960273 and surrounding properties; (3) any agreements, drawings or other documents pertaining to the detention facility designed circa 1998 and located at the intersection of FM 1604 and Culebra Road; (4) any documents relating to agreements or contracts entered into from 1995 until the present with CMH Parks, Inc., KB Home Lone Star, Inc., or any other developers/property owners agreeing to pay the City of San Antonio or SAWS storm water discharge fees associated with the use of the detention facility; (5) any pictures or documents pertaining to the effect of rainfall occurring in April of 2010 on the easement, the detention facility, the SAWS Property Plat Map #960273, and surrounding properties; and (6) any pictures or documents pertaining to the effect of rainfall anytime from 1998 to the present on the easement, the detention facility, the SAWS Property Plat Map #960273, and surrounding properties. You claim the requested information is excepted

from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative samples of information.<sup>1</sup>

Initially, we note you have not submitted a representative sample of any agreements or contracts responsive to item four of the request. We assume, to the extent this information existed when SAWS received the request for information, you have released it to the requestor. If not, then you must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

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 that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information at issue. 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 the pending or anticipated 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 [1<sup>st</sup> 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 have provided pleadings demonstrating, a lawsuit styled *Harwell Holding Company, Ltd., Westwood Center Apartments, Ltd., Westwood Center Apartments Phase II, Ltd., and Culebra 1604 Joint Venture v. Fisher Engineering, Inc., W.F. Castella &*

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<sup>1</sup>We assume the "representative samples" of information submitted to this office are truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

*Associates, Inc. n/k/a AECOM USA, Inc., KB Home Lone Star, Inc., CMH Parks, Inc., City of San Antonio, and San Antonio Water System* was filed in the 37<sup>th</sup> District Court for Bexar County, Texas, prior to the receipt of this request for information. Based on our review of the pleadings you provided and the information at issue, we find the information at issue is related to the litigation to which SAWS was a party when the request for the information was received. We therefore conclude SAWS may withhold the information at issue under section 552.103 of the Government Code.

However, we note 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 the opposing party in the anticipated or 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 related litigation concludes or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); 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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/bs

Ref: ID# 399622

Enc. Submitted documents

c: Requestor  
(w/o enclosures)