



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 28, 2010

Ms. Helen Valkavich
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2010-16355

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# 398328 (COSA File No. 10-1286).

The City of San Antonio (the "city") received requests from the same requestor for (1) specified records pertaining to accrued code compliance charges and interest; (2) specified records regarding the demolition of a certain property and a decision about the city's immunity from liability; (3) the names of the city officials responsible for code compliance charges; and (4) a specified retainer agreement between the city and a named law firm. You state the city will provide some of the requested information to the requestor. You claim the submitted investigation notes are 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. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

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). 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 that (1) litigation was 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).

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). To establish litigation is reasonably anticipated, a governmental body must provide this office with “concrete evidence showing the claim that litigation may ensue is more than mere conjecture.” *Id.* This office has concluded a governmental body’s receipt of a claim letter it represents to be in compliance with the notice requirements of the Texas Tort Claims Act (the “TTCA”), chapter 101 of the Civil Practice and Remedies Code, or an applicable municipal ordinance, is sufficient to establish litigation is reasonably anticipated. *See* Open Records Decision No. 638 at 4 (1996).

You assert the city reasonably anticipates litigation pertaining to the submitted investigation notes because the city received a notice of claim letter from the requestor prior to receiving the requests for information. You state the claim letter meets the requirements of the TTCA, as well as section 150 of the city charter, and alleges the city’s liability for injuries sustained by the requestor as a result of the city demolishing improvements on property in which the requestor has an interest. Based on your representations and our review, we conclude the city reasonably anticipated litigation when it received the requests for information. You state the investigation notes relate to the litigation because they pertain to the basis of the anticipated litigation. Therefore, we find section 552.103 generally applies to the submitted information.

The requestor contends, however, the submitted information should be released because his requests for information operate as requests for “informal discovery” pertaining to anticipated or pending litigation between the requestor and the city. In support of his contention, the requestor cites to Open Records Decision No. 579 (1990). In that decision, this office determined an informal exchange of information between litigants based on an agreement to exchange documents is not a “voluntary” release of information for purposes of the Act. ORD 579 at 7. That decision, however, did not create procedures for informal discovery, nor did it create a method for undermining the exceptions to public disclosure

found in the Act. Accordingly, the city may withhold the submitted investigation notes under section 552.103 of the Government Code.

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). 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(a), and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).¹

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 398328

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address the city's remaining arguments against disclosure under sections 552.107 and 552.111, or the requestor's remaining arguments regarding the attorney-client privilege.