



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 2, 2011

Ms. Jessica C. Eales  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2011-05929

Dear Ms. Eales:

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# 416032 (GC No. 18266).

The City of Houston (the "city") received a request for ten categories of information produced from November 1, 2010, to the present, relating to radiation in the drinking water in Houston and other areas. You claim 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 representative sample of information.<sup>1</sup> We have also considered comments submitted by the requestor's attorney. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.103 of the Government Code provides in part as follows:

- (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.

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<sup>1</sup>We assume the "representative sample" of records 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 that submitted to this office.

...

(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 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 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). 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). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You claim the city reasonably anticipates litigation because the Chasewood Community Improvement Association posted on its public website minutes from a civic club meeting on January 19, 2011, referring to attorneys representing residents within this community in a lawsuit concerning contamination in the city's water supply. The minutes reflect the attorneys advised residents of what is required before the attorneys will represent them in lawsuits concerning contamination. The attorneys also advised residents to keep their water filters and samples from hot water heaters as evidence for litigation. Based on our review of the posted minutes, we find the city reasonably anticipated litigation. Citing Open Records Decision No. 429 (1983), the requestor's attorney argues, however, that the requested information cannot be withheld under section 552.103 because it is not clearly relevant or directly related to the anticipated litigation. ORD No. 429 at 3 (stating statutory predecessor to section 552.103 applies only to information clearly relevant to pending litigation); see Open Records Decision No. 222 at 2-3 (1979) (stating statutory predecessor to section 552.103 not applicable where there is no showing of direct relationship between information sought and pending or contemplated litigation). However, the Third Court of Appeals stated that for purposes of section 552.103, the phrase "related to" is construed according to its common usage and is therefore broadly defined to include information "pertaining to", "associated with", or "connected with" contemplated litigation. *Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 483 (Tex. App.—Austin 1997, no pet.). The

court further opined that, “[i]nformation can be *related to* litigation without being *relevant to* the substantive issues in the litigation.” *Id.* at 483. Therefore, because the submitted information pertains to contamination in, and the safety of, the city’s water supply, we find it relates to the anticipated litigation. Accordingly, the city may withhold the submitted information under section 552.103 of the Government Code.

However, once the information has been obtained by all parties to the litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). Also, the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision No. 350 at 3 (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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/eeg

Ref: ID# 416032

Enc. Submitted documents

c: Requestor  
(w/o enclosures)