



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2011

Mr. Quentin D. Price
First Assistant City Attorney
City of Beaumont
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2011-07487

Dear Mr. Price:

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# 418724 (No. 03-23).

The City of Beaumont (the "city") received a request for (1) the identities of and the amounts paid to all attorneys or law firms hired to represent the city and/or its employees from 2006 to the date of the request; (2) any policies and procedures used to select such attorneys or law firms; and (3) the present balance in the city's legal defense fund. 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 information you submitted. As you have submitted no information relating to any policies and procedures used to select attorneys or law firms, we assume the city has released any information responsive to that aspect of this request that existed when the city received the request. If not, then the city must release any such information immediately.¹ See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

We first note much of the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(3) provides for required public 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 made confidential under other law. Gov’t Code § 552.022(a)(3). We have marked information in accounts relating to the expenditure of public funds that is subject to section 552.022(a)(3). You seek to withhold the marked information under section 552.103 of the Government Code, which 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.) (Gov’t Code § 552.103 may be waived); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for purposes of section 552.022(a)(3). Therefore, the city may not withhold the marked information that is subject to section 552.022(a)(3) under section 552.103 of the Government Code. As you claim no other exception to disclosure of the marked information, the city must release that information pursuant to section 552.022(a)(3).

Next, we address your claim under section 552.103 of the Government Code for the rest of the information at issue. This exception 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 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 that (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 [1st 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 contend the remaining information at issue is related to a lawsuit pending in the United States District Court for the Eastern District of Texas, Beaumont Division, styled *Derrick Newman v. City of Beaumont, Texas, et al.* You have submitted a copy of the plaintiff's first amended complaint in the lawsuit, in which the plaintiff alleges the city, its police chief, its city manager, and several named police officers are liable for civil rights violations. We note the remaining information at issue consists of lists of law firms and attorneys retained by the city in connection with the pending lawsuit and other matters. We find the information we have marked, which relates to a law firm retained by the city in connection with the pending lawsuit, is related to the pending litigation. We therefore conclude the city may withhold the marked information under section 552.103 of the Government Code. We find you have not explained how or why any of the remaining information at issue is related to the pending litigation. *See* Open Records Decision Nos. 551 at 5 (1990) (attorney general will determine whether governmental body has reasonably established information at issue is related to litigation), 511 at 2 (1988) (information "relates" to litigation under statutory predecessor if its release would impair governmental body's litigation interests). We therefore conclude the city may not withhold any of the remaining information under section 552.103.

In concluding the city may withhold the marked information under section 552.103, we assume the opposing party in the pending lawsuit has not seen or had access to any of the marked information. 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, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

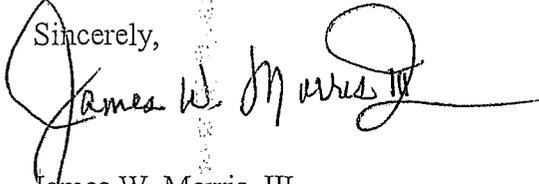
In summary, the city (1) must release the information we have marked under section 552.022(a)(3) of the Government Code; (2) may withhold the information we have marked under section 552.103 of the Government Code, provided the opposing party in the pending lawsuit has not seen or had access to the information; and (3) must release the rest of the submitted information.

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 418724

Enc: Submitted documents

c: Requestor
(w/o enclosures)