



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2011

Mr. Michael G. Morris
Gary, Thomasson, Hall & Marks, P.C.
For the City of Port Aransas
P.O. Box 2888
Corpus Christi, Texas 78403

OR2011-12337

Dear Mr. Morris:

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# 428056.

The City of Port Aransas (the "city"), which you represent, received a request for all minutes and files on all variances granted by the city's Board of Adjustments and Appeals ("BOA") from 2009 until the date of the request, including information that shows whether all requirements were met. 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 information.

Initially, we note the submitted information contains agendas and minutes of public meetings of the city's BOA. The agendas and minutes of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See* Gov't Code §§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying on request to governmental body's chief administrative officer or officer's designee), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). As a general rule, the exceptions to disclosure found in the Act, such as section 552.103, do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the submitted agendas and minutes of the public meetings must be released pursuant to section 551.022 of the Government Code.

Next, we note the remaining information includes city ordinances. As laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See* Open Records Decision Nos. 551 at 2–3 (1990) (laws or ordinances are open records), 221 at 1 (1979) (official records of governmental body’s public proceedings are among most open of records). Therefore, the submitted city ordinances must be released.

You seek to withhold the remaining information under section 552.103 of the Government Code. Section 552.103 provides in part the following:

(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). The city 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 of the receipt of the request for information and (2) the information at issue is related to the pending or anticipated 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 city must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation representing, that a lawsuit, styled *City of Port Aransas, Texas et al. v. Jeffrey Pearce and the Board of Adjustment of the City of Port Aransas*, Cause No. 2011 DCV 1760-E, was pending in the 148th District Court of Nueces County, Texas on the date the city received the present request. Upon review, we agree litigation to which the city is a party was pending at the time of the request. We also conclude the remaining information is related to the pending litigation. Accordingly, we conclude section 552.103 of the Government Code is generally applicable to the remaining information.

We note, however, it appears the opposing parties have seen or had access to some of the remaining information. The purpose of section 552.103 is to enable a governmental body

to protect its position in litigation by forcing parties seeking information relating to the litigation to obtain such information through discovery procedures. *See* ORD 551 at 4-5. Thus, once the opposing party in pending litigation has seen or had access to information that is related to the litigation, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Accordingly, you may withhold the portions of the remaining information that the opposing parties to the litigation have not seen or had access to under section 552.103 of the Government Code. We 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 submitted city agendas, minutes of the public meetings, and city ordinances must be released. With the exception of any information previously seen by the opposing parties, the remaining information may be withheld 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,



Kirsten Brew
Assistant Attorney General
Open Records Division

KB/em

Ref: ID# 428056

Enc. Submitted documents

c: Requestor
(w/o enclosures)