



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 12, 2011

Mr. Michael W. Dixon
For the City of Robinson
Haley & Olson, P.C.
510 North Valley Mills Drive, Suite 600
Waco, Texas 76710

OR2011-13081

Dear Mr. Dixon:

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# 429576.

The City of Robinson (the "city"), which you represent, received a request for information pertaining to a specified notice of sale pertaining to a specified address. 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 some of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(15). In this instance, the submitted information includes a notice of sale that was published in a newspaper and a document entitled "Instructions to Bidders".

Because the city published the notice, and based on your statement that the “Instructions to Bidders” document was released to the public in bid packages, we find these pages are regarded as open to the public under the city’s policies and therefore are subject to section 552.022(a)(15) of the Government Code. The city may only withhold information subject to section 552.022(a)(15) if it is confidential under “other law.” Although you seek to withhold the information subject to section 552.022 under section 552.103 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); 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 expressly confidential for purposes of section 552.022. Therefore, the published legal notice and “Instructions to Bidders” document, which we have marked, may not be withheld under section 552.103. As you raise no other exceptions to disclosure, this information must be released.

We next turn to your argument under section 552.103 of the Government Code for the information that is not subject to section 552.022. 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.

(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 that 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 city must meet both prongs of this test for information to be excepted under 552.103(a).

You inform this office, and provide documentation reflecting, that prior to the city's receipt of the request it was sued by the requestor. You represent this lawsuit is currently pending. You also inform this office, and have provided documents reflecting, this lawsuit involves accusations that the city misrepresented information in a sale of property at the specified address to the requestor. Thus, based on your representations and our review, we agree litigation involving the city was pending on the date the requests were received. We also find you have demonstrated how the remaining information at issue is related to this lawsuit. Thus, we agree the city may withhold the remaining information under section 552.103 of the Government Code.

We note, however, once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information at issue that has either been obtained from or provided to all opposing parties in the 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 concluded or is no longer anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the city must release the information we marked pursuant to section 552.022(a)(15) of the Government Code. The city may withhold the remaining information at issue 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/agn

Ref: ID# 429576

Enc. Submitted documents

c: Requestor
(w/o enclosures)
