



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2012

Mr. Stephen R. Alcorn
Assistant City Attorney
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053-4045

OR2012-01359

Dear Mr. Alcorn:

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# 443594.

The City of Grand Prairie (the "city") received a request for information pertaining to a specified property over a specified time period. You state the city has released some of the requested information, including the submitted inspection report. You claim the remaining requested 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.¹

You assert that, except for the inspection report, the submitted information is excepted under section 552.103 of the Government Code, which provides 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

¹We assume the "representative sample" of records submitted to this office is 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 that those records contain substantially different types of information than that submitted to this office.

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 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 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).

You explain the then-owner of the specified property filed two lawsuits against the city. You state one of the lawsuits was dismissed and the other resulted in a summary judgment in favor of the city and the owner filed appeals of these two lawsuits (the "appeals"). You explain the owner filed for bankruptcy in the United States Bankruptcy Court of the Western District of New York ("the bankruptcy court") while the appeals were pending. The bankruptcy court ordered a stay of all other proceedings until the bankruptcy case concluded. You state the bankruptcy proceeding was pending at the time the city received the present request. Thus, you indicate the appeals were pending when the city received the request for information. Based on your representations and our review, we agree litigation was pending as of the date the request was received. You state, and the documents reflect, the information at issue relates to the pending litigation. Accordingly, the city may withhold the information at issue pursuant to section 552.103 of the Government Code.

We note 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). Accordingly, the city may only withhold the submitted information the opposing party to the litigation has not seen or had access to under section 552.103 of the Government Code. We note the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 443594

Enc. Submitted documents

c: Requestor
(w/o enclosures)