



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 24, 2012

Mr. Kenneth A. Krohn
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2012-05848

Dear Mr. Krohn:

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# 451319.

The City of El Paso (the "city") received a request for: 1) certain settlement agreements; 2) documents that reflect a change in the city's posture regarding settlement of a particular case and reimbursement of over-width paving to developers; 3) documents that show a change in the city's posture prior to the commencement of litigation between a named developer and the city; and 4) documents showing the city's position regarding developer's claims for over-width paving reimbursement prior to and throughout litigation. You state the city released documents responsive the first category of the request and has no documents responsive to the third category of the request. You explain the city is relying on a previous ruling from this office to withhold documents responsive to category two of the request. You claim documents responsive to category four of the request are excepted from disclosure under sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted sample of information.¹

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 those records contain substantially different types of information than that submitted to this office.

Initially, you inform us the documents responsive to category two of the instant request were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-14729 (2010). In that ruling, we determined the city may withhold documents related to its settlement of litigation with Ranchos Real IV pursuant to section 552.103 of the Government Code. The city may continue to rely on Open Records Letter No. 2010-14729 with respect to documents responsive to category two of the instant request. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we address your arguments against disclosure of the documents responsive to category four of the request. Section 552.103 of the Government Code 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 an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate 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 the pending or anticipated litigation. *See 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 from disclosure under section 552.103(a). *See* ORD 551 at 4.

You state, and provide documentation showing, the city received the request for information after a lawsuit styled *JNC Land Co., Inc. v. City of El Paso, Texas*, Cause No. 2010-4955, was filed in the 205th Judicial District Court of El Paso County. You also assert the submitted information is related to the pending litigation. Based on your representations and

our review, we find the submitted information is related to litigation that was pending against the city when the city received the request for information. Accordingly, the city may withhold the submitted information from disclosure under section 552.103 of the Government Code.²

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, 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,



Karen Hattaway
Assistant Attorney General
Open Records Division

KEH/sdk

Ref: ID# 451319

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because we make this determination under section 552.103 of the Government Code, we need not address your other arguments against disclosure of this information.