



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2012

Ms. Melissa Gonzalez
City Administrator
City of Dilley
P.O. Drawer 230
Dilley, Texas 78017

OR2012-06297

Dear Ms. Gonzalez:

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# 452103.

The City of Dilley (the "city") received a request for: (1) the matrix regarding responses to the solid waste request for proposals ("RFP"), distributed to city council members at the February 14, 2012, city council meeting; (2) all proposals submitted in response to the solid waste RFP for 2011 and 2012; and (3) all e-mail correspondence pertaining to companies that submitted proposals in response to the solid waste RFP. 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 you have not submitted information related to items 1 and 2 of the request for information. To the extent this information existed on the date the city received the request, we assume the city has released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If the city has not already released such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Next, we note you have submitted information that is outside the time frame specified in the request. Such information, which we have marked, is not responsive to the present request.

This ruling does not address the public availability of the non-responsive information, and such information need not be released in response to this request.

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.

The governmental body 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 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 governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

You claim the remaining information pertains to pending litigation. You state, and have provided documentation showing, a lawsuit styled *Texas Disposal Systems, Inc. v. City of Dilley*, Case No. 11-12-00397-CVF, was filed in the 81st Judicial District Court of Frio County on December 13, 2011. Based on your representations and our review, we determine the litigation was pending on the date the city received the request for information. You state the information at issue relates to issues raised in the pending litigation. Based on your representations and our review, we find the information at issue is related to the pending litigation for the purposes of section 552.103.

The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information that relates to the litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, if the opposing party to pending litigation has already seen or had access to information that relates to the litigation, through discovery or otherwise, there is no interest in now withholding such information under section 552.103.

See Open Records Decision Nos. 349 (1982), 320 (1982). We note the information at issue consists of e-mail correspondence sent between the city and the requestor, the opposing party in the pending litigation. Thus, this information is not excepted from disclosure under section 552.103, and the city may not withhold it on that ground. As you raise no other exceptions to disclosure, the city must release 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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

Ref: ID# 452103

Enc. Submitted documents

c: Requestor
(w/o enclosures)