



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 7, 2012

Ms. Donna L. Johnson
Attorney for City of Hilshire Village
Olson & Olson, LLP
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2012-06684

Dear Ms. Johnson:

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# 452775 (Ref. No. HV-FAR-2-22-12)

The City of Hilshire Village (the "city"), which you represent, received a request for resumes for individuals being considered for the replacement building official for the city. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. Additionally, you state the request for information may implicate the interests of third parties. Accordingly, you have notified the individuals of their right to submit comments to this office stating why the submitted information should not be released.¹ *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note a portion of the request requires the city to answer questions. The Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8, 561 at 8-9

¹As of the date of this letter, this office has not received comments from any third party explaining why any of the submitted information should not be released.

(1990), 555 at 1-2, 534 at 2-3 (1989). In this instance, we assume the city has made a good faith effort to locate any information responsive to this request. Accordingly, we will address your claimed exceptions for the submitted information.

Section 552.103 of the Government Code provides, in relevant 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 has the burden of providing relevant facts and documents to show that the section 552.103(a) exception applies 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 requested information is related to that 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 parts of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

You provide documentation showing an original petition and application for declaratory judgment and/or mandatory injunction, styled *Brady and Cathleen Farris v. Richard and Sharon Fink, Claunch & Miller, Inc., Ted Lazarides, and Robin Border*, Cause No. 2009-46543, is currently pending against the city in the 80th District Court in Harris County, Texas. You inform us, and the submitted documentation reflects, that the city's mayor is named as a defendant in this lawsuit in his official capacity as a city employee. The submitted documentation also reflects that a contractor previously serving as the city's building official is named as a defendant in the lawsuit in his official capacity as a city contractor. You explain city officers will be called to testify in the case. You state, and provide documentation reflecting, this lawsuit was filed prior to the city's receipt of the instant request. Therefore, we agree litigation was pending on the date the city received the request for information. You also state the information at issue is directly related to or will be used as evidence in this case. Based on your representations and our review, we find the

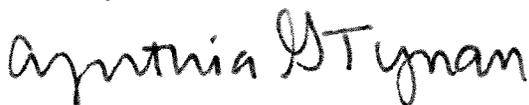
submitted information is related to the pending litigation. Accordingly, the city may withhold the submitted information under section 552.103.²

We note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* ORD 551 at 4-5. Therefore, once the information at issue has been obtained by all parties to the litigation through discovery or otherwise, a section 552.103(a) interest no longer exists as to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103(a) ends once the litigation has 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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

Ref: ID# 452775

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because our ruling is dispositive, we do not address your remaining argument against disclosure.