



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2012

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001

OR2012-10344

Dear Ms. Evans:

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# 458086 (GC No. 19599).

The Houston Airport System (the "system") received a request for three reports pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code.¹ Additionally, you state release of a portion of this information may implicate third party interests. Accordingly, you have notified the Occupational Safety and Health Administration ("OSHA") of the request for information and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). As of the date of this letter, we have not received comments from OSHA explaining why the requested information should not be released. We have considered the exception you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides in relevant part:

¹Although you raise sections 552.101, 552.110, and 552.131, you have not submitted arguments in support of these exceptions; therefore, we assume you have withdrawn them. *See* Gov't Code §§ 552.301, .302.

(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.

Id. § 552.103(a), (c). The system 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 was pending or reasonably anticipated on the date of the receipt of the request for information and (2) the information at issue is related to the pending or anticipated 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 system must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and have provided documentation showing, that lawsuits styled *Maria Zuniga Ranjel v. Continental Airlines, Inc.*, Cause No. 401,097, and *Jeanie Turner ex rel. Estate of Travis Kelley Turner v. Continental Airlines, Inc.*, Cause No. 402,404, were filed against the City of Houston (the "city") in Harris County Probate Court No. 2, prior to the date the system received the request. However, we note the system is not a party to these proceedings. In such a situation, we require an affirmative representation from a governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. You provide an affidavit from the city stating it objects to release of the submitted information because this information relates to pending litigation against the city. Based on your representations and those of the city, we determine the litigation was pending on the date the system received the request for information. You state the submitted information relates to issues raised in the pending litigation. Based on your representations and our review, we find the submitted information is related to the pending litigation for the purposes of section 552.103. Accordingly, the system may withhold the submitted information under section 552.103 of the Government Code on behalf of the city.

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). Further, 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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 458086

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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