



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2012

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

OR2012-10752

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# 458759 (GC# 19590).

The City of Houston (the "city") received two requests from different requestors for all documents and communications for a specified time period regarding the original design plans for and the condition of the Yale Street Bridge at a specified location. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. Additionally, you state a portion of the requested information may implicate the interests of a third party. Accordingly, you inform us you have notified JKnesek & Associates, Inc. of the request and of its right to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed 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). The city 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 city 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 a lawsuit styled *Responsible Urban Development for Houston v. City of Houston*, Cause No. 2011-62725, was filed against the city in Harris County District Court prior to the date the city received the request. You also state the submitted information is directly related to the subject matter of the pending litigation. Based on your representations and our review, we determine the litigation was pending on the date the city received the request for information and the submitted information is related to the pending litigation for the purposes of section 552.103. Accordingly, the city may withhold the submitted information under section 552.103 of the Government Code.

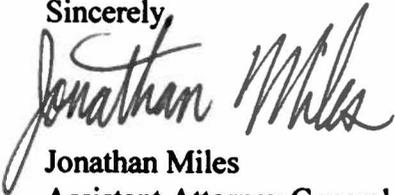
However, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Further, the applicability of section 552.103(a) ends once the litigation 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,

A handwritten signature in cursive script that reads "Jonathan Miles". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 458759

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)