



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 1, 2012

Mr. Warren M. S. Ernst
Chief of the General Counsel Division
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2012-12001

Dear Mr. Ernst:

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# 460925.

The City of Dallas (the "city") received a request for (1) all e-mails from January 1, 2012 to May 10, 2012 from any Dallas Arboretum and Botanical Society, Inc. ("arboretum") employee or board member outlining arboretum parking, (2) all e-mails from April 10, 2012 to May 10, 2012 from any arboretum employee or board member referencing the arboretum's Facebook page, and (3) a report showing the dates of each meeting of four specified individuals. You state the city will make some of the requested information available to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.103 of the Government Code provides in part:

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.

(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 at issue. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of 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 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

You state, and have provided documentation demonstrating, that an Application and Affidavit for Temporary Restraining Order and Temporary Injunction styled *Christopher Bryan Fears v. Sheffield Kadane, as City Councilman for District 9 of City of Dallas, Mary Brinegar, as President and CEO of Dallas Arboretum and Botanical Society, Inc. and Paul Dyer, as Director of Dallas Park and Recreation Department*, Cause No. 12-04834, was filed in a district court of Dallas County prior to the receipt of this request for information. Based on our review of your representations and the submitted information, we find that the submitted information is related to this pending litigation. We therefore conclude the city may withhold the submitted information under section 552.103 of the Government Code.²

In reaching this conclusion, we assume that the opposing party in the pending litigation has not seen or had access to any of the information at issue. 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.* If the opposing party has seen or had access to information relating to pending litigation, through

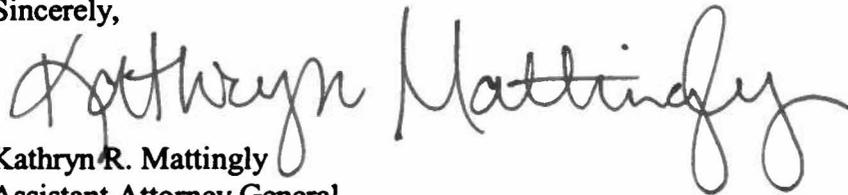
²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

discovery or otherwise, then there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We note that the applicability of section 552.103 ends once the related litigation concludes. *See* 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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 460925

Enc. Submitted documents

c: Requestor
(w/o enclosures)