



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 6, 2012

Ms. Susan Fillion
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2012-14111

Dear Ms. Fillion:

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# 464025 (C.A. File No. 12PIA0309).

The Harris County Attorney's Office (the "county attorney's office") received a request for correspondence between the county attorney's office and the Texas Comptroller of Public Accounts related to a "proposed amended and restated contingent-fee agreement[,] and an application for review and approval of the proposed agreement. You indicate some information is being released or has already been released. 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 representative sample of information.¹

We next note that the responsive information includes two orders approved by the Harris County Commissioners Court (the "commissioners court"). These orders, which we have marked, appear to have been adopted at a public meeting of the commissioners court and,

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

thus, each order is an official record of a governmental body's public proceedings. As such, the marked orders, and their attachments, must be released. See Open Records Decision No. 221 at 1 (1979) ("official records of the public proceedings of a governmental body are among the most open of records").

You assert the remaining information is excepted from public disclosure under section 552.103 of the Government Code. Section 552.103 provides, in relevant 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.

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 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 that 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 under section 552.103.

The county attorney's office provides documentation showing that on December 22, 2011, it filed suit on behalf of Harris County (the "county"), in a case styled *Harris County v. International Paper Company*, Cause No. 2100-76724, which is currently pending in the 295th Judicial District Court of Harris County, Texas. Accordingly, we find the county attorney's office has established litigation was pending on the date it received the request for information. The county attorney's office asserts, and we agree, the remaining submitted information relates to the pending lawsuit. Accordingly, the county attorney's office may withhold the remaining submitted information under section 552.103 of the Government Code.

Generally, however, once information has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, we note the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 at 3 (1982), 349 at 2.

In summary, the orders of the commissioners court and their attachments, which we have marked, must be released. The county attorney's office may withhold the remaining submitted information under section 552.103 of the Government Code.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/som

Ref: ID# 464025

Enc. Submitted documents

c: Requestor
(w/o enclosures)