



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2012

Ms. Barbara L. Quirk
Attorney for City of Holland
McKamie Krueger, LLP
223 West Anderson Lane, Suite A105
Austin, Texas 78752

OR2012-17476

Dear Ms. Quirk:

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# 469776.

The City of Holland (the "city"), which you represent, received a request for the employment application, verified references, and salary of, and complaints against, a named officer; specified city ordinances; and specified citations issued during a specified time period. You state some information has been released. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.117, 552.130, 552.137, and 552.147 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information.

Initially, you have marked portions of the submitted information which you state are not responsive to the specific categories of information sought by the requestor. This ruling does not address the public availability of the non-responsive information, nor is the city required to release non-responsive information in response to this request.

¹Although you raise section 552.101 of the Government Code in conjunction with sections 552.117, 552.1175, 552.130, 552.137, and 552.147, we note section 552.101 does not encompass other exceptions in the Act. Further, although you also raise section 552.1175 of the Government Code, section 552.117 is the proper exception to raise for information the city holds in its capacity as an employer.

You assert the requested citations are maintained by the city's municipal court (the "court") and are therefore records of the judiciary. The Act is applicable to information "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). However, the Act's definition of "governmental body" expressly excludes the judiciary. *Id.* § 552.003(1)(B). Information "collected, assembled, or maintained by or for the judiciary" is not subject to the Act but instead is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov't Code § 552.003(1)(B) prior to enactment of Gov't Code § 552.0035). Thus, to the extent the requested citations are maintained solely by the court, they are not subject to the Act and need not be released in response to this request for information.² However, you state some citations may be "in process" with the city's police department. To the extent the requested citations are maintained by the city, they are subject to the Act and must be released unless they are excepted from disclosure under the Act.

We next note you have not submitted the requested citations, to the extent they are maintained by the city, or the requested city ordinances. To the extent information responsive to these portions of the request existed on the date the city received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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.

...

²We note records of the judiciary may be public under other sources of law. *See* Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); *id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Local Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order); *see also* *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released); Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

(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). 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 state a citation was issued to the requestor and was pending with the court prior to the date of the request. Therefore, we agree litigation was pending on the date the city received the request for information. You also state the information at issue pertains to the substance of the lawsuit claims. 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 552.103.³

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 anticipated 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 or is no longer reasonably anticipated. 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,

³Because our ruling is dispositive, we do not address your remaining arguments against disclosure.

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 "Misty Haberer Barham".

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 469776

Enc. Submitted documents

c: Requestor
(w/o enclosures)