



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2013

Mr. Ray Rodriguez
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2013-07569

Dear Mr. Rodriguez:

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# 487084 (COSA File No. W013443-021913).

The City of San Antonio (the "city") received a request for all documents, e-mails, phone logs, correspondence, meeting notes, contracts, grants, and financial records pertaining to the Hays Street Bridge project. You state you will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.103, 552.105, 552.106, 552.107, 552.111, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state some of the responsive information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2012-13948 (2012) and 2012-20477 (2012). In Open Records Letter No. 2012-13948, we determined (1) the city may withhold the submitted appraisal report subject to section 552.022(a)(1) of the Government Code under rule 503 of the Texas Rules of Evidence, to the extent the appraisal report at issue did not exist separate and apart from the privileged communication to which it was attached; (2) the city may withhold the remaining information it marked under section 552.105 of the Government Code; (3) the city must withhold the e-mail addresses we marked under section 552.137 of the Government Code unless the owners of the e-mail addresses consent to their release; and (4) the city must release the remaining responsive information. In Open Records Letter No. 2012-20477, we determined (1) the submitted ordinances must be released; (2) except for the information subject to section 552.022(a)(3) of the Government Code, the city may withhold the

information marked under section 552.105 of the Government Code; (3) the city may generally withhold the e-mails marked under section 552.107(1) of the Government Code; however, if the marked non-privileged e-mails are maintained by the city separate and apart from the otherwise privileged e-mail strings in which they appear, then the city may not withhold the marked non-privileged e-mails under section 552.107(1) of the Government Code; (4) the city may withhold the information we marked under section 552.111 of the Government Code; (5) the city must withhold the information we marked under section 552.117(a)(1) of the Government Code, if the employee whose cellular telephone number we marked timely requested confidentiality under section 552.024 of the Government Code and a governmental body does not pay for the cellular telephone service, (6) the city must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure; and (7) the city must release the remaining responsive information.

Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See Gov't Code § 552.007*; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the city may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.103, this section does not prohibit the release of information or make information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, to the extent any portion of the submitted information was previously released in accordance with Open Records Letter Nos. 2012-13948 and 2012-20477, the city may not now withhold such information under section 552.103. As we have no indication the law, facts, and circumstances on which Open Records Letter Nos. 2012-13948 and 2012-20477 were based have changed, the city may continue to rely on these rulings as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, in Open Records Letter No. 2012-13948, we noted information created after June 13, 2012 was not responsive to that request, thus, the previous ruling did not rule on any information submitted for June 14, 2012. Additionally, in Open Records Letter No. 2012-20477, we noted information created after October 8, 2012 was not responsive to that request, therefore, the previous ruling did not rule on any information submitted for October 9, 2012. As such, the city may not withhold any information for June 14, 2012 or October 9, 2012 that is responsive to the

present request on the basis of Open Records Letter Nos. 2012-13948 or 2012-20477, respectively. We will address your arguments for this information not subject to the previous determinations.

Section 552.103 of the Government Code provides 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(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 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, a lawsuit styled *Hays Street Bridge Restoration Group v. City of San Antonio*, Cause No. 2012-CI-19589 was pending in the 288th Judicial District Court in Bexar County, Texas on the date the city received the instant request for information. You further represent the information at issue is related to the pending litigation because it pertains to the claims in the lawsuit. Upon review of your arguments and the information at issue, we find litigation was pending when the city received the instant request for information and the information at issue relates to the pending litigation. Therefore, we find the city may withhold the remaining submitted information under section 552.103 of the Government Code.¹

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information

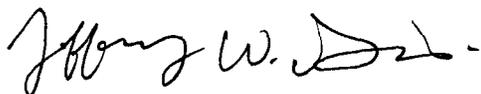
We note once information has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or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

In summary, the city may rely on Open Records Letter Nos. 2012-13948 and 2012-20477 as previous determinations and withhold or release the identical information in accordance with those rulings. The city may withhold the remaining 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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 487084

Enc. Submitted documents

c: Requestor
(w/o enclosures)