



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2013

Ms. Molly Shortall
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2013-07725

Dear Ms. Shortall:

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# 486863 (W010563-022013).

The City of Arlington (the "city") received a request for all information pertaining to a specified property. 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 information.

The submitted information contains a court-filed document that is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). Although you assert this information is excepted from disclosure under section 552.103, this section is a discretionary exception to disclosure that protects the governmental body's interests and does not make information confidential under

the Act. *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 section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Therefore, the city may not withhold this information, which we have marked, under section 552.103, but instead must release it to the requestor.

You assert the remaining information is excepted from disclosure under section 552.103 of the Government Code, which 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, that prior to the city's receipt of this request, the city filed an eminent domain lawsuit styled *City of Arlington v. Fatmeh Hussein, Hamed M. Hindi, Wajieh Hussein, Wael H. Hindi, Ziad M. Saleh, Anthony W. Stoker, Haider O. Abed, and Abram Complete Auto Service & Alignment, Inc.*, cause no. 2013-000739-3, in the County Court at Law No. 3 of Tarrant County. You state in this lawsuit the city seeks to acquire, by eminent domain, the property at issue in the request. Accordingly, we find that litigation was pending when the city received the present request for information. We also find the information at issue relates to the pending litigation. Therefore, section 552.103 is generally applicable to the remaining information.

In this instance, however, all of the opposing parties in the litigation at issue have seen or had access to some of the information at issue. 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, if the opposing parties have seen or had access to information relating to litigation, through 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). Accordingly, the information we have marked that all opposing parties in the litigation have seen or had access to may not be withheld under section 552.103. As you raise no other exception to disclosure of this information, it must be released. However, the city may withhold the remaining information under section 552.103 of the Government Code. We note 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).

In summary, the city must release the court-filed document we have marked pursuant to section 552.022(a)(17) of the Government Code. Except for the information we have marked that all opposing parties in the litigation have seen or had access to, which must also be released, 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 486863

Enc. Submitted documents

c: Requestor
(w/o enclosures)