



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 7, 2013

Mr. Alan J. Bojorquez  
City Attorney for the City of West Lake Hills  
Bojorquez Law Firm, P.C.  
12325 Hymeadow Drive, Suite 2-100  
Austin, Texas 78750

OR2013-13709

Dear Mr. Bojorquez:

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# 495590.

The City of West Lake Hills (the "city"), which you represent, received a request for all communications, e-mails, letters, and other documents concerning a specified plat amendment and conveyance of a right-of-way by the city. You claim the requested information is excepted from disclosure under sections 552.103, 552.105, 552.107, 552.111, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.103 of the Government Code provides, in part, the following:

- (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.

---

<sup>1</sup>We 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.

...

(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). The city has the burden of providing relevant facts and documents to show 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 of the 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, 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 city must meet both prongs of this test for information to be excepted under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990). In addition, this office has concluded litigation was reasonably anticipated when the potential opposing party hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, or when an individual threatened to sue on several occasions and hired an attorney. *See* Open Records Decision Nos. 346 (1982), 288 (1981). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983). In the context of anticipated litigation in which the governmental body is the prospective plaintiff, the concrete evidence must at least reflect that litigation is "realistically contemplated." *See* Open Records Decision No. 518 at 5 (1989); *see also* Attorney General Opinion MW-575 (1982) (finding that investigatory file may be withheld from disclosure if governmental body attorney determines that it should be withheld pursuant to section 552.103 and that litigation is "reasonably likely to result").

You inform us the city is currently involved in a dispute regarding a specific piece of property within the city. You state the city council voted to approve a plat vacation for the property at issue, contingent upon the receipt of a right-of-way granted by the then owner of the property. You indicate the city sought this right-of-way in order to expand the city's main thoroughfare. You state the plat was vacated, but claim the city never received the promised right-of-way, and the property was sold to a new owner. You claim that since these events, the issues of the plat vacation and the right-of-way have become contentious, leading you to believe litigation is now imminent.

In support of the belief that litigation is imminent, you state, and provide documentation showing, the city received an e-mail from the current owner of the property referencing his "legal team" and threatening litigation against the mayor of the city. You also state the current owner has made verbal threats to sue the city during two separate meetings with the mayor and city administrator. You further state, and provide documentation showing, the city has received a communication from an attorney for the property's former owner, stating she has retained counsel "in connection with the disputes that have arisen between the current owners of the Property... and [the city] concerning the right-of-way donation that the [c]ity came to expect in August 2011." We further note this communication promises to defend the property's former owner against any possible legal action by the city, and instructs city officials to cease and desist certain communications with the former owner's spouse and direct all communication regarding the issue of the plat vacation or the right-of-way to the attorney's office.

You also inform us the city has retained an eminent domain attorney to represent the city in eminent domain litigation related to the right-of-way acquisition, and in negotiations for any other necessary right-of-ways related to expansion of the city's main thoroughfare. Finally, you state, and the submitted information shows, the city's attorney and the city have discussed potential causes of action related to the right-of-way and the plat amendment in which it would be the prospective plaintiff. Based on your representations, our review, and the totality of the circumstances presented, we determine the city reasonably anticipated litigation when it received the request for information. Furthermore, we find the information at issue is related to the anticipated litigation. Therefore, we conclude the city may withhold the information at issue under section 552.103 of the Government Code.<sup>2</sup>

We note, however, once the information at issue has been obtained by all parties to the anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information obtained from or provided to all other parties in the anticipated litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded or is

---

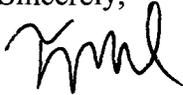
<sup>2</sup>Because our ruling is dispositive, we do not address your remaining arguments against disclosure.

no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/dls

Ref: ID# 495590

Enc. Submitted documents

c: Requestor  
(w/o enclosures)