



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 8, 2013

Mr. Buck Brice
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2013-17449

Dear Mr. Brice:

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# 501695 (City File No. 512).

The City of Corpus Christi (the "city") received a request for audio recordings and a written transcript of all radio traffic during a specified time period pertaining to a specified incident. 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.

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.

...

(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 governmental body claiming section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information, and (2) the information at issue is related to that litigation. See *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. See Open Records Decision No. 551 at 4 (1990).

You state, and provide documentation showing, prior to the city's receipt of the instant request, an application for a temporary restraining order and injunction styled *Travis Curtis, Constancia Rodriguez, Albert Ricalday, et al v. City of Corpus Christi*, Cause No. 2013-CCV-61317-2, was filed in the County Court at Law No. 2 of Nueces County as a result of an explosion allegedly caused by a leaking gas line maintained by the city. 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.

We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. See ORD 551 at 4-5. Thus, if the opposing party has seen or had access to information relating to the pending litigation through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. See Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103 ends once the related litigation concludes or is no longer reasonably anticipated. See 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.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,

A handwritten signature in black ink, appearing to read "Ni A. Ybarra". The signature is fluid and cursive, with a prominent initial "Ni" and a stylized "Ybarra".

Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/ac

Ref: ID# 501695

Enc. Submitted documents

c: Requestor
(w/o enclosures)