



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 12, 2013

Ms. Jai Collier  
Office of General Counsel  
Houston Housing Authority  
2640 Fountain View Drive  
Houston, Texas 77057

OR2013-19729

Dear Ms. Collier:

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# 505384.

The Houston Housing Authority (the "authority") received a request for seven categories of records related to the authority's wholly-owned subsidiary Fulton Village Redevelopment Corporation ("FVRC"). You claim the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We note the submitted information includes minutes of a meeting of and a resolution adopted by the FVRC's board of directors. Minutes of a governmental body's public meetings are

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<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.

specifically made public under provisions of the Open Meetings Act (“OMA”), chapter 551 of the Government Code. *See id.* §§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying on request to governmental body’s chief administrative officer or officer’s designee), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). Because laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See Open Records Decision No. 551 at 2-3 (1990)* (laws or ordinances are open records). The submitted resolution is analogous to an ordinance. Moreover, the resolution appears to have been adopted at a public meeting of the board and thus is an official record of a governmental body’s public proceedings. *See Open Records Decision No. 221 at 1 (1979)* (“official records of the public proceedings of a governmental body are among the most open of records”). As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989)*. Thus, provided the FVRC is a governmental body for purposes of the OMA, the authority must release the meeting minutes and the resolution we have marked pursuant to the OMA.<sup>2</sup> *See Gov’t Code § 551.001(3)* (defining “governmental body” for purposes of OMA). Otherwise, we will address your arguments to withhold this information pursuant to the Act.

We next address your arguments against disclosure of the remaining 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.

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<sup>2</sup>The determination whether the FVRC is a governmental body subject to the OMA is beyond the scope of this division’s authority in issuing open records decisions. *See Gov’t Code § 552.301(a)* (division’s authority is limited to determining whether requested information falls within an exception to disclosure).

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 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, orig. proceeding); *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.

To establish that litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). 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.<sup>3</sup> Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”). On the other hand, this office has determined that 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).

You state the United States Department of Housing and Urban Development (“HUD”) awarded FVRC a contract to be the performance-based contract administrator (“PBCA”) for a HUD housing program in Texas. You explain the Southwest Housing Compliance Corporation (“SHCC”) was an unsuccessful applicant for the PBCA contract. You state SHCC filed suit against HUD related to the contract award and an appeal in the matter is pending. You assert SHCC seeks “to secure the PCBA contract for itself through attempts to disqualify [FVRC] from the contract award by court order.” You acknowledge FVRC and the authority are not parties to the litigation but claim “SHCC is attempting to broaden the scope of [the pending] litigation through facts specific to the [FVRC] contract award[.]”

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<sup>3</sup>In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

Upon review, we find the authority has failed to demonstrate it reasonably anticipated litigation on the date it received the request for information. Consequently, section 552.103 of the Government Code is inapplicable, and the authority may not withhold any of the remaining information under section 552.103. As you raise no other exception to disclosure, the requested information must be released.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 505384

Enc. Submitted documents

c: Requestor  
(w/o enclosures)