ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2013

Mr. Michael Bostic
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2013-20071

Dear Mr. Bostic:

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# 506010.

The City of Dallas (the "city") received two requests from the same requestor for information pertaining to the 2013-2018 Five Year Consolidated Plan, the 2013-2014 Annual Plan, and a specified Analysis of Impediments. The city states it will release some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.[1] We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor asserts sections 91.225(a)(1) and 570.601(a)(2) of title 24 of the Code of Federal Regulations require the city to make the requested information available to him for inspection. Title 24 addresses regulations that relate to housing and urban

[1]We assume 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 those records contain substantially different types of information than that submitted to this office.

development. Part 91 of title 24 pertains to consolidated submissions for community planning and development programs, including the contents of consolidated plans. Section 91.225(a)(1) provides the following:

> General. The following certifications, satisfactory to [the Department of Housing and Urban Development ("HUD")], must be included in the annual submission to HUD. . . .
>
> > (1) Affirmatively furthering fair housing. Each jurisdiction is required to submit a certification that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.

24 C.F.R. § 91.225(a)(1). Part 570 of title 24 pertains to community development block grants. Section 570.601(a)(2) reads as follows:

> The following requirements apply according to sections 104(b) and 107 of [title I of the federal Housing and Community Development Act of 1974 as amended (42 U.S.C. §§ 5301 *et seq.*)]:
>
> > . . .
> >
> > (2) Public Law 90–284, which is the Fair Housing Act (42 U.S.C. 3601–3620). In accordance with the Fair Housing Act, the Secretary [of Housing and Urban Development] requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. Furthermore, in accordance with section 104(b)(2) of the Act, for each community receiving a grant under subpart D of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard.

Id. § 570.601(a)(2). While sections 91.225(a)(1) and 570.601 address requirements related to maintaining certain records under title 24, neither section makes those records available for inspection. The requestor does not cite to any other law, and we are not aware of any,

that requires the city to release the submitted information to him. Therefore, we will address the city's arguments against release of the submitted documents.

Section 552.103 of the Government Code provides in relevant part 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). The governmental body has the burden of providing relevant facts and documents to show section 552.103 is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is 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, 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 prongs of this test for information to be excepted from disclosure under section 552.103(a).

You state, and provide documentation demonstrating, a lawsuit styled *Lockey v. City of Dallas*, Cause No. 3:11-cv-00354-O in the United States District Court Northern District of Texas, Dallas Division, was filed against the city. You state the trial court dismissed that lawsuit, but the plaintiff filed a notice of appeal prior to the city's receipt of the request for information. You state the submitted information relates to this lawsuit. Based on your representations and our review, we find you have established the information at issue is related to litigation that was pending on the date the city received the request for information. Accordingly, we conclude the city may withhold the submitted information under section 552.103 of the Government Code.[2]

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[2]As our ruling is dispositive, we do not address your other arguments to withhold this information.

We note, however, once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 506010

Enc. Submitted documents

c: Requestor
(w/o enclosures)