



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 5, 2014

Mr. Jaime J. Muñoz  
Counsel for the City of San Juan  
P.O. Box 47  
San Juan, Texas 78589

OR2014-13569

Dear Mr. Muñoz:

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# 531614.

The City of San Juan (the "city") received a request for documents relating to a specific arrest, including the arrest warrant, order setting bail, and accompanying affidavits. 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.

Initially, we note that you have only submitted Complaints, Arrest Warrants, Commitments, and a Motion to Dismiss. Therefore, to the extent additional information responsive to the remaining portions of the request exists and was maintained by the city on the date it received the request, we assume the city has released it to the requestor. If the city has not released such information, it must do so at this time. Gov't Code §§ 552.301(a), .302; Open Records Decision No. 662 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Next, we note the submitted information includes court filed documents, which are subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record" unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). Although you raise section 552.103 of the Government Code, this is a discretionary exception 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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 177 at 3 (1977). As such, section 552.103 does not make information confidential for the purposes of section 552.022. Therefore, the Commitments and Motion to Dismiss, which we have marked, may not be withheld under section 552.103. As you raise no further exceptions to disclosure, the Commitments and Motion to Dismiss must be released.

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 supporting documentation, prior to the city's receipt of the instant request for information, the requestor filed a lawsuit styled *Ruben Navarro, et al. vs. Chief Juan Gonzalez, et al.*, Cause No. M-12-66, in the United States District Court for the Southern District of Texas naming the city as a defendant. You state the information at issue is related to the pending litigation. Based on your representations and our review, we find the city may withhold the remaining information under section 552.103 of the Government Code.

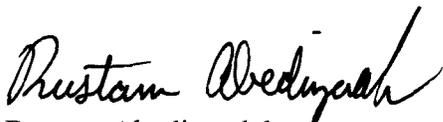
Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending 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 been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the Commitments and Motion to Dismiss must be released to the requestor under section 552.022 of the Government Code. 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.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,



Rustam Abedinzadeh  
Assistant Attorney General  
Open Records Division

RA/dls

Ref: ID# 531614

Enc. Submitted documents

c: Requestor  
(w/o enclosures)