



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 16, 1998

Ms. Bonnie Lee Goldstein
Vial, Hamilton, Koch & Knox, L.L.P.
1717 Main Street, Suite 4400
Dallas, Texas 75201-7388

OR98-0165

Dear Ms. Goldstein:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112479.

The City of Glenn Heights (the "city") received a request for information related to property located at 610 Bear Creek Road, Glenn Heights, Texas. You claim that 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 information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *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 (1990) at 4. The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

You explain that the city council, after an open meeting, condemned the property which is the subject of this request for information. You represent that the attorney for the owner of the property stated that he intends to appeal the decision to condemn the property, and that the city therefore anticipates judicial review of the decision as provided by section 214.0012 of the Local Government Code. In this instance you have made the requisite showing that the requested information relates to anticipated litigation for purposes of section 552.103(a). Some of the records may therefore be withheld from disclosure.

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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed.

In addition, some of the documents which the city wishes to withhold include minutes and publicly posted notices and agendas. These documents are public documents that may not be withheld from disclosure. Open Records Decision No. 221 (1979) at 1 (official records of public proceedings of governmental body are among the most open of records). To the extent that any of the information at issue has been publicly disclosed by the city at a council meeting, it may not be withheld from disclosure pursuant to section 552.103(a). *See* Gov't Code § 552.007 (information made public may not be selectively withheld from disclosure); Open Records Decision Nos. 551 (1990) at 2-3, 221 (1979) at 1 (official records of public proceedings of governmental body are among most open of records).

Some of the records submitted for our review, such as deeds and liens, appear to have been filed with the county clerk, and are therefore public and must be disclosed. *See* Local Gov't Code § 192.001 (duty of county clerk to record deeds, mortgages and other instruments); *see also* *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992).

Also included in the documents submitted is a copy of a city ordinance. A municipal ordinance may not be withheld from public disclosure under section 552.103 of the Government Code. *See* Open Records Decision No. 551 (1990) (construing predecessor statute). Assuming that the handwritten notes on the ordinance are not notes of a public meeting, the city may redact the handwritten notations. *See* Open Records Decision No. 225 (1979) (handwritten notes of public meetings are public).

Finally, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/alg

Ref.: ID# 112479

Enclosures: Submitted documents

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(w/o enclosures)