



July 12, 1999

Mr. Dick H. Gregg, Jr.
Gregg & Gregg
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR99-1920

Dear Mr. Gregg:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125778.

The City of Seabrook (the "city") received a request for an agreement submitted by Taylor Lake Holdings, Inc. ("Taylor Lake") concerning an in-city municipal utility district contract. You assert that the requested information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. We have considered your arguments and reviewed the information submitted.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. A 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. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *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). A governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

You explain that the requested information is a draft of a proposed settlement agreement submitted by Taylor Lake for final settlement of pending litigation. We agree that the requested information relates to pending litigation. However, when the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). Section 552.103(a) was intended to prevent

the use of the Open Records Act as a method of avoiding the rules of discovery in litigation. Attorney General Opinion JM-1048 at 4 (1989). The litigation exception enables a governmental body to protect its position in litigation by requiring information related to the litigation to be obtained through discovery. Open Records Decision No. 551 at 3 (1990). Because the requested information was obtained from Taylor Lake, the opposing party, you may not withhold the information under section 552.103(a) as there is no longer a section 552.103(a) interest.

You next assert that section 552.111 excepts the requested information from public disclosure. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those *internal communications* consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. The requested agreement is not excepted under section 552.111 because it is not an internal communication reflecting the policymaking process of the city; it is a document submitted to the city by an outside party. The agreement is not an "intra-agency memorandum" excepted by section 552.111 merely because it was distributed to different city officials for review. Thus, you must release the requested information.

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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/ch

Ref: ID# 125778

Encl. Submitted documents

cc: Mr. Herman Burton
2981 Sea Ledge Drive
Seabrook, Texas 77586
(w/o enclosures)