



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 1, 2009

Ms. Caroline E. Cho
Assistant County Attorney
Williamson County
405 Martin Luther King, #7
Georgetown, Texas 78626

OR2009-04255

Dear Ms. Cho:

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# 338691.

The County of Williamson (the "county") received a request for communications during a specified time period between the county and Waste Management Inc. ("WMI") regarding a new contract or amendment to the present contract to operate and/or manage the county landfill. You state you have released some of the requested information. 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.

Section 552.103 provides 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 purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. See Open Records Decision No. 551 at 4-5 (1990). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date that the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (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.); ORD 551 at 4. A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). Contested cases conducted under the Administrative Procedure Act, chapter 2001 of the Government Code (the "APA"), are considered litigation under section 552.103. Open Records Decision No. 588 at 7 (1991).

You state the county filed a lawsuit styled *County of Williamson v. Waste Management of Texas, Inc.*, Cause No. 07-748-C368 seeking a declaration of validity of a land fill contract. Subsequent to the county filing suit, four parties intervened in the suit and filed a cross claim against the county. On July 10, 2008, a final judgement was entered. On September 16, 2008, the intervenors filed an appeal of the judgement in the Third Court of Appeals, which is still ongoing. You also inform us the county has applied for a permit amendment to expand its Type I Municipal Solid Waste Landfill Facility. You state this permit application is the subject of an ongoing, contested APA proceeding and have identified the individuals who are opposed to the county's application. Based on your representations and our review of the submitted information, we conclude the county was involved in pending litigation when it received this request. You have also explained that the submitted information relates to the contract negotiations. Accordingly, we find the submitted information is related to the pending litigation. Therefore, the county may withhold the submitted information under section 552.103 of the Government Code.

However, we note, 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 all other parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, 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).

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 338691

Enc. Submitted documents

c: Requestor
(w/o enclosures)