



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2009

Ms. Kristina Laurel Hale
Assistant City Attorney
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579

OR2009-09000

Dear Ms. Hale:

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# 347925.

The City of Laredo (the "city") received a request for (1) all records regarding seven categories of information and (2) all e-mails from the computers of three named individuals regarding the seven listed categories of information. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have received comments from the requestor. *See Gov't Code § 552.304* (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Section 552.103 of the Government Code provides in 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.

Id. § 552.103(a), (c). A governmental body that raises section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (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 the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *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).*

The city received the request for information on April 9, 2009. You inform us that a law firm representing the requestor submitted a demand letter to the city for the payment of outstanding invoices pertaining to a contract with the city. However, we note, and the submitted information reflects, that the city did not receive the demand letter until April 20, 2009. Based on your representations and our review, we conclude that litigation was not pending when the present request for information was received by the city. Further, you have not demonstrated that litigation was reasonably anticipated on the date that the city received the present request. Therefore, we find that the city may not withhold any of the submitted information under section 552.103 of the Government Code. As you raise no further arguments against disclosure, the submitted information must be released.

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 347925

Enc. Submitted documents

cc: Requestor
(w/o enclosures)