



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 21, 2009

Ms. Clarissa M. Rodriguez  
Denton, Navarro, Rocha & Bernal  
2517 North Main Avenue  
San Antonio, Texas 78212

OR2009-10077

Dear Ms. Rodriguez:

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# 349587.

The City South Management Authority (the "authority"), which you represent, received a request for the zoning history pertaining to certain specified parcels, including a parcel map.<sup>1</sup> You claim that the requested information is excepted from disclosure under sections 552.103 and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You state you have informed the requestor that portions of the requested information are available on the city's website. We note that section 552.228 of the Government Code requires a governmental body to provide a requestor with a "suitable copy" of requested public information. Gov't Code § 552.228(a). We also note that "[a] public information officer does not fulfill his or her duty under the Act by simply referring a requestor to a governmental body's website for requested public information." Open Records Decision No. 682 at 7 (2005). Instead, section 552.221 of the Government Code requires a governmental body "to either provide the information for inspection or duplication in its offices or to send copies of the information by first class United States mail." *Id.*; see Gov't Code § 552.221(b). Thus, the authority must provide access to or copies of the responsive information you state is on the city's website to the requestor; however, we note that a

---

<sup>1</sup>We note that the authority was created by ordinance of the City of San Antonio (the "city") pursuant to section 375.304 of the Local Government Code.

requestor may agree to accept information on a governmental body's website in fulfillment of a request for information under the Act. ORD 682 at 7.

We next note that the submitted information in Exhibit C contains a city ordinance. Because laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See* Open Records Decision No. 551 at 2-3 (1990) (laws or ordinances are open records). Accordingly, the authority must release this information, which we have marked, to the requestor.

Section 552.103 provides in relevant part 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). 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 was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *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.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, that prior to the authority's receipt of this request, a lawsuit styled *Ernest D. Chacon v. City of San Antonio and City South Management Authority*, Cause No. 2008C114007, was filed in the District Court of Bexar County, Texas, 45<sup>th</sup> Judicial District and, after removal, is currently pending in the United States District Court, Western District of Texas - San Antonio Division. Accordingly, we find that litigation was pending when the authority received this request for information. Furthermore, you explain the lawsuit relates to the information at issue because it relates to zoning and disannexation of the property that is the subject of the request. Based on these

representations and our review, we agree the information at issue relates to the pending litigation. Therefore, section 552.103 is generally applicable to the remaining information.

We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information that is related to litigation through discovery procedures. *See* ORD 551 at 4-5. If the opposing party has obtained or otherwise been given access to the information then there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We note that some of the information the authority seeks to withhold is readily available on the City of San Antonio's web site. Thus, this information may not be withheld under section 552.103. Further, the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982). Thus, except for the information obtained from or provided to the opposing parties to the litigation or available on the city's web site, the authority may withhold the remaining information under section 552.103 of the Government Code.

With respect to the information that may not be withheld under section 552.103, we will address your argument under section 552.105 of the Government Code, which excepts from disclosure information that relates to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov't Code § 552.105. Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. *See* Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information that is excepted from disclosure under section 552.105 that pertains to such negotiations may be excepted from disclosure so long as the transaction relating to that information is not complete. *See* ORD 310. But the protection offered by section 552.105 is not limited solely to transactions not yet finalized. This office has concluded that information about specific parcels of land obtained in advance of other parcels to be acquired for the same project could be withheld where release of the information would harm the governmental body's negotiating position with respect to the remaining parcels. *See* ORD 564 at 2. A governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" ORD 357 at 3 (quoting Open Records Decision No. 222 (1979)). The question of whether specific information, if publicly released, would impair a governmental body's planning and negotiating position with regard to particular transactions is a question of fact. Accordingly, this office will accept a governmental body's good-faith determination in this regard, unless the contrary is clearly shown as a matter of law. *See* ORD 564.

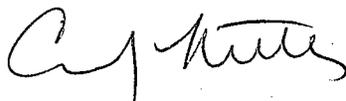
You state that disclosure of the information at issue "could give the requestor, or any other interested non-party, an unfair advantage as to what the [authority] is willing to pay and under what conditions." However, you fail to demonstrate how release of the information at issue would impair the authority's negotiating position with regard to a particular transaction. As you have failed to demonstrate how section 552.105 is applicable to the information at issue, none of the remaining information may be withheld on this basis.

In summary, unless the requestor agrees to accept information on the city's website, the authority must provide access to or copies of the responsive information you state is on the city's website to the requestor. The authority must release the city ordinance, which we have marked, to the requestor. Except for the information obtained from or provided to the opposing parties to the litigation or available on the city's web site, which must be released, the authority 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.oag.state.tx.us/open/index\\_orl.php](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 349587

Enc. Submitted documents

c: Requestor  
(w/o enclosures)