



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 22, 2009

Mr. Robert J. Perez  
Shelton & Valadez  
Attorney for City of Hondo  
600 Navarro, Suite 500  
San Antonio, Texas 78205

OR2009-15016

Dear Mr. Perez:

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# 359197.

The City of Hondo (the "city"), which you represent, received two requests for correspondence pertaining to the May 9, 2009 recall election. You inform this office that upon review of the request received on August 7, 2009, the city has determined it maintains no information responsive to this particular request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3. Accordingly, you have withdrawn your request for a ruling pertaining to the August 7, 2009 request. However, with respect to the August 6, 2009 request, you maintain the submitted information is excepted from disclosure under section 552.103 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides in relevant 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

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<sup>1</sup>We note in your correspondence dated August 27, 2009, you withdrew your previous assertion of section 552.107 of the Government Code.

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 that claims an exception to disclosure under section 552.103 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 on the date that the request for information is received, 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). Both prongs of this test must be satisfied in order for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

You state the city is a party to a lawsuit styled *Garcia v. City of Hondo*, Cause No. 5:09-cv-00394-FB. You state, and provide documentation showing, the lawsuit was filed in the United States District Court for the Western District of Texas, San Antonio Division prior to the city's receipt of the present request for information. Thus, we conclude litigation involving the city was pending when the city received the request. You assert the submitted information relates to ballot issues, charter violations, and Voting Rights Act violations, which form the basis of the pending lawsuit. Therefore, we find the information at issue relates to the pending litigation for purposes of section 552.103. We therefore conclude the city may withhold the submitted information under section 552.103 of the Government Code.

We note, 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. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has been obtained from or provided to all opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 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](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, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/rl

Ref: ID# 359197

Enc. Submitted documents

cc: Requestors (2)  
(w/o enclosures)