



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 4, 2009

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

OR2009-15715

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# 360648.

The City of Hondo (the "city"), which you represent, received a request for information provided to the Department of Justice regarding the recall ballot measure format. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.137 of the Government Code and privileged under Texas Rule of Evidence 503.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-15016 (2009). In Open Records Letter No. 2009-15016, we concluded the city may withhold the submitted information under to section 552.103 of the Government Code. As we have no indication that the law, facts, and circumstances surrounding this prior ruling have changed, you may continue to rely on Open Records Letter No. 2009-15016 as a previous determination and withhold the responsive information in this request that was previously

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with section 552.107 of the Government Code and rule 503 of the Texas Rules of Evidence, this office has concluded that section 552.101 does not encompass discovery privileges or other exceptions found in the Act. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

ruled on in accordance with this prior ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We note, however, that portions of the submitted information were created after the date that the previous request for information was received. Thus, this information was not submitted to this office for a determination and was therefore not the subject of the previous ruling. Accordingly, we will address your arguments against disclosure of the remaining information that is not subject to Open Records Letter No. 2009-15016.

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 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 remaining 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).

In summary, you may continue to rely on Open Records Letter No. 2009-15016 as a previous determination and withhold the responsive information in this request that was previously ruled on in accordance with this prior ruling. The city may withhold the remaining information under section 552.103 of the Government Code.<sup>2</sup>

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,



Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/rl

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 360648

Enc. Submitted documents

c: Requestor  
(w/o enclosures)