



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 7, 2009

Mr. Burk Roberts  
Roberts & Roberts, L.L.P.  
2501 E. Elms Road, Suite A  
Killeen, Texas 76542-3019

OR2009-17246

Dear Mr. Roberts:

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# 363375.

The City of Harker Heights (the "city"), which you represent, received a request for communications between the city and the City of Belton, and any correspondence sent or received from two named individuals containing the word "Nolanville" during a specified time period. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You assert that the submitted information is excepted from disclosure under section 552.103 of the Government Code, which provides in relevant part:

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<sup>1</sup> Although you correctly note that Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, are "other law" for purposes of section 552.022 of the Government Code, the information for which you claim these provisions is not subject to this section. *See* Gov't Code § 552.022 (listing categories of information that are expressly public under the Act and must be released unless confidential under "other law"). Therefore, this information is properly addressed under section 552.107, rather than rule 503, and under section 552.111 rather than rule 192.5. Open Records Decision Nos. 677 at 8-9 (2002), 676 at 3.

(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). The governmental body claiming this exception bears the burden of providing relevant facts and documents to demonstrate the applicability of the exception. The test for meeting this burden is a showing that (1) litigation is 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). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. See Open Records Decision No. 452 at 4 (1986). When the governmental body is the prospective plaintiff in litigation, the evidence of anticipated litigation must at least reflect that litigation involving a specific matter is "realistically contemplated." See Open Records Decision No. 518 at 5 (1989); see also Attorney General Opinion MW-575 (1982) (investigatory file may be withheld if governmental body's attorney determines that it should be withheld pursuant to section 552.103 and that litigation is "reasonably likely to result").

You state the city is joining with the City of Belton in a lawsuit against the City of Nolanville. You state the Harker Heights City Council and Belton City Council have each instructed that a lawsuit will be filed. Accordingly, we find the city reasonably anticipated litigation on the date of the request. You further state the submitted information constitutes the documents which, when finalized, will be used to initiate the lawsuit. Based on your representations, we find the submitted information is related to the anticipated litigation. Accordingly, the city may withhold the submitted information under section 552.103.

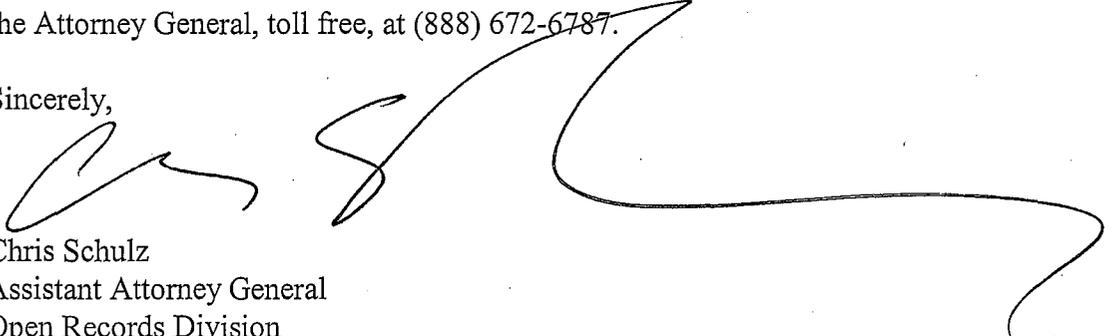
Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information.

Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated 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 been concluded or is no longer reasonably anticipated. 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](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,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 363375

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)