



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2010

Ms. Maureen R. M. Singleton
Thompson & Horton LLP
711 Louisiana Street, Suite 2100
Houston, Texas 77002-2746

OR2010-01001

Dear Ms. Singleton:

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# 367620.

The Houston Community College System (the "system"), which you represent, received a request for any lists, reports, memoranda, or documents related to a specified condemnation proceeding. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides:

(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 (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, the system received the request for information after a condemnation lawsuit styled *Houston Community College System v. Soula Tropoli, Trustee; Atlantic National Corporation; James E. Murnane, Trustee, and North Houston Bank; The City of Houston; and the Taxing Authorities of the County of Harris, the City of Houston, the Houston Community College System, and the Houston Independent School District*, Cause No. 943321 was filed in the County Civil Court at Law Number Two in Harris County, Texas. Based upon your representation and our review, we conclude litigation involving the system was pending when system received the request. You also state the submitted information relates to the pending litigation. Based on your representations and our review, we find the submitted information is related to the pending litigation for the purposes of section 552.103. We, therefore, conclude the system may withhold the information at issue under section 552.103 of the Government Code.¹

We note, however, that once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information that has either 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. *See* Attorney General Opinion MW-575 (1982); *see also* 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.

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of the duplicate information in Exhibit D.

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, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/dso

Ref: ID# 367620

Enc. Submitted documents

c: Requestor
(w/o enclosures)