



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 16, 2010

Mr. Lawrence G. Provins  
Assistant City Attorney  
City of Pearland  
3519 Liberty Drive  
Pearland, Texas 77581-5416

OR2010-02222

Dear Mr. Provins:

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# 370310.

The City of Pearland (the "city") received a request for all documents related to a specified company since January 1, 2009. You claim that the information at issue is excepted from disclosure under sections 552.103, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.103 of the Government Code provides in 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

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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). The city 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 the department 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 city 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 city's receipt of the present request for information, the city filed a lawsuit against the company specified in the request. You state that the information at issue is related to the pending lawsuit. Based on your representations and our review of the submitted information, we conclude that litigation was pending when the city received the present request. We also agree that the submitted information is related to the litigation for purposes of section 552.103. Therefore, the city may withhold the information at issue under section 552.103(a) of the Government Code.<sup>2</sup>

We note, however, that once information has been obtained by all parties to the pending 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 pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends when the litigation has concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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

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,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 370310

Enc. Submitted documents

c: Requestor  
(w/o enclosures)