



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 8, 2010

Mr. Paul K. Pearce
Matthews, Stein, Shiels, Pearce, Knott, Eden & Davis, L.L.P.
Attorney for City of Granbury
8131 LBJ Freeway, Suite 700
Dallas, Texas 75251

OR2010-03356

Dear Mr. Pearce:

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# 373504.

The City of Granbury (the "city"), which you represent, received a request for civil engineering plans for a specified subdivision, including "drainage plan, paving plan, utility plan, etc." You claim the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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

¹ 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 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 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 this public information request, a lawsuit styled *Jack and Janis Brandy v. Charles Jason Britt, dba Premier Homes and the City of Granbury* was filed in the 355th District Court of Hood County. We therefore agree the litigation was pending on the date the city received the request. You also provide an affidavit from the city's assistant city manager stating the requested information directly relates to the pending litigation. Thus, we find the city has established the requested information relates to the pending litigation. Therefore, the city may withhold the submitted information under section 552.103 of the Government Code.

We note, however, that 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). Further, the applicability of section 552.103(a) ends once the litigation has concluded. 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,

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,

A handwritten signature in cursive script, appearing to read "Mack T. Harrison".

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/rl

Ref: ID# 373504

Enc. Submitted documents

c: Requestor
(w/o enclosures)