ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2010

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-3360

OR2010-06803

Dear Mr. Bounds:

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# 379082.

The City of Corpus Christi (the "city") received a request for the following information pertaining to the intersection of South Port Avenue and Home Road between December 2007 and September 2008: 1) complaints, street work orders, repair invoices, construction invoices, city invoices, or invoices to independent contractors for street repairs or water line repairs between block numbers 3800 and 4200 on South Port Avenue and between block numbers 2000 and 2400 on Home Road; 2) e-mails associated with street repairs and/or knowledge of needed street repairs or water line repairs within a one block radius of the intersection; 3) water line work orders within a five block radius of the intersection; and 4) reports of any sink hole or pot hole work orders or repairs within a five block radius. You state the city has no other responsive information other than the information you have submitted.[1] You claim the submitted documents are excepted from disclosure under

[1]The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.–San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially we note some of the submitted documents are subject to section 552.022 of the Government Code. Section 552.022(a) provides in part:

> (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:
>
> > (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body; except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted documents include work activity reports, which are completed reports made for, or by, the city and are subject to 552.022(a)(1). The city must release the work activity reports under section 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Although you raise section 552.103 of the Government Code for this information, section 552.103 is a discretionary exception that protects the governmental body's interests and is, therefore, not "other law" for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to Gov't Code § 552.103 subject to waiver). Therefore, the city may not withhold the work activity reports under section 552.103 of the Government Code. As you raise no further exceptions to disclosure, the work activity reports must be released.

We next turn to your claim under section 552.103 of the Government Code for the remaining documents. Section 552.103 provides in pertinent 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). The 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 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). *See* ORD 551 at 4.

You state, and provide documentation showing, the city received the request for information after a lawsuit styled *Rose Marie Gonzalez v. City of Corpus Christi*, cause number 09-60687, was filed in the Nueces County Court at Law No. 1. Based on your representation and our review, we conclude litigation involving the city was pending when the city received the request. You also state the submitted documents are related to the litigation because they pertain to the repair work at issue in the lawsuit. Based on your representation and our review, we find the remaining documents are related to the pending litigation for the purposes of section 552.103. We, therefore, conclude the city may withhold the remaining documents under section 552.103.

We note, however, 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 at issue 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).

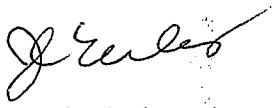
In summary, the city must release work activity reports. The city may withhold the remaining documents under section 552.103.

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 379082

Enc. Submitted documents

c: Requestor
(w/o enclosures)