ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2010

Ms. Helen Valkavich
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2010-15589

Dear Ms. Valkavich:

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# 396861 (COSA File No. 10-1206).

The City of San Antonio (the "city") received a request for information pertaining to the closure of a specified property. You claim the requested information 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 information.

Initially, we note portions of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-08694 (2010). In this ruling, we concluded the city may withhold certain marked information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege and other marked information under section 552.103 of the Government Code. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2010-08694 was based have changed. Accordingly, with regard to the requested information that is identical to the information previously requested and ruled upon by this office in this prior ruling, we conclude the city may continue to rely on Open Records Letter No. 2010-08694 as a previous determination and withhold or release the identical information in accordance with this ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will address the submitted arguments.

Section 552.103 of the Government Code provides in relevant part as follows:

> (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.
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> . . .
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> (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 purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). 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 that (1) litigation was pending or reasonably anticipated on the date that the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *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.*); ORD 551 at 4. A governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

You state, and have provided documentation showing, that prior to the city's receipt of the present request, a lawsuit styled *City of San Antonio v. James Michael Spicer, et al*, 2010 CI-05143, was filed and is currently pending in the 224th Judicial District Court in Bexar County, Texas. Therefore, we agree that litigation was pending on the date the city received the present request for information. Further, you state that the remaining information is related to the lawsuit pending before the court because it pertains to the basis of the litigation. Thus, based on the city's representation and our review of the information at issue, we agree that the remaining information relates to the pending litigation. Accordingly, we conclude the city may withhold the remaining information under section 552.103 of the Government Code.[1]

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[1]As our ruling is dispositive, we need not address your remaining arguments against disclosure.

We note, 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. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the 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 may continue to rely on Open Records Letter No. 2010-08694 as a previous determination and withhold or release the identical information at issue in that ruling in accordance with Open Records Letter No. 2010-08694. The city may withhold the remaining information under section 552.103 of the Government Code.

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,

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 396861

Enc. Submitted documents

c: Requestor
(w/o enclosures)