



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2012

Ms. Susan Guinn
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2012-16487

Dear Ms. Guinn:

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# 468430 (COSA File Nos.: W009208-073012, W009239-073112, W009272-080112, W009339-080312, W009340-080312, W009336-080312, W009337-080312, W009338-080312, and W009545-081012).

The City of San Antonio (the "city") received nine requests for information pertaining to a specified zoning case, permissible uses according to a specified city ordinance, zoning histories for specified lots, the 1987 and 2001 versions of the Unified Development Code, training documentation pertaining to the Unified Development Code, preservation rights, specified applications and permits, personnel records of three named employees of the city's Development Services Department, and copies of specified ordinances. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.111, 552.117, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains copies of city ordinances. As laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See* Open Records Decision Nos. 551 at 2-3 (1990) (laws or ordinances are open records), 221 at 1 (1979) (official records of governmental body's public proceedings are among most open of records). Therefore, the

city may not withhold the submitted ordinances, which we have marked, under section 552.103 of the Government Code.

We also note the remaining information contains agendas and minutes of public meetings of the city. The agendas and minutes of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See Gov't Code §§ 551.022* (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying on request to governmental body's chief administrative officer or officer's designee), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). Although you seek to withhold this information under section 552.103 of the Government Code, as a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989)*. Accordingly, the submitted agendas and minutes of the public meetings, which we have marked, must be released pursuant to section 551.022 of the Government Code.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. This section provides, in pertinent part:

(a) [T]he 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;

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(1), (3), (15). In this instance, the remaining information includes completed evaluations; information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by the city; and information found on the city's website. This information is subject to subsections 552.022(a)(1), 552.022(a)(3), and 552.022(a)(15) of the Government Code, respectively. You argue this information is excepted from disclosure by section 552.103 of the Government Code. Section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *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), 663 at 5 (1999) (waiver of discretionary exceptions). As such, section 552.103 does not make information confidential under the Act. Therefore, none of the information encompassed by subsections 552.022(a)(1), 552.022(a)(3), and 552.022(a)(15), which we have marked, may be withheld under section 552.103.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. Accordingly, the information we have marked under section 552.022 of the Government Code must be released, but any information that is protected by copyright must only be released in accordance with copyright law.

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.

...

(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 a lawsuit styled *Patrick J. Kennedy, Jr., et. al. v. Trinity University; Roderick Sanches, in his official capacity as Director of Planning and Development Services, City of San Antonio, Texas; Planning and Development Services Department of the City of San Antonio, Texas; and City of San Antonio, Texas*, was filed in the 438th Judicial District Court on April 4, 2012, prior to the city's receipt of the requests. Further, you state the pending litigation concerns the requestor's clients' claim that the city and Trinity University violated provisions of the city's Unified Development Code. You state the remaining information is related to the pending litigation. Based on your representations and our review, we agree litigation was pending on the date the city received the present requests for information. We also find the information at issue is related to the pending litigation. Accordingly, we conclude the remaining information may generally be withheld under section 552.103 of the Government Code.¹

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). We note 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 the marked (1) city ordinances, (2) agendas and minutes of the public meetings pursuant to section 551.022 of the Government Code, and (3) information subject to subsections 552.022(a)(1), 552.022(a)(3), and 552.022(a)(15) of the Government Code; however, any information protected by copyright may only be released

¹As our ruling for this information is dispositive, we need not address your remaining arguments against its release.

in accordance with copyright law. 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 468430

Enc. Submitted documents

c: Requestor
(w/o enclosures)