



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2013

Mr. Charles T. Jeremiah
Counsel for the City of Nassau Bay
Chamberlain, Hrdlicka, White, Williams & Aughtry
1200 Smith Street, Suite 1400
Houston, Texas 77002

Mr. Christopher Gregg
Assistant City Attorney for the City of Nassau Bay
Gregg & Gregg, P.C.
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2013-08618

Dear Mr. Jeremiah and Mr. Gregg:

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# 488181.

The City of Nassau Bay (the "city"), which you represent, received three requests from the same requestor for information regarding an inspection and alleged code violation at his property, a specified inspection report, along with photographs, minutes and handwritten notes from specified Board of Adjustment (the "board") meetings, information available to the board for review in the two specified meetings, any information regarding the requestor's alleged code violation, and any information issued to the requestor by the city in a specified time period. The city received a request from a separate requestor for any inspection reports regarding the same specified address during a specified time period. You claim the submitted information is excepted from disclosure under section 552.103 of the Government

Code.¹ We have considered the exception you claim and reviewed the submitted information, which is in part a representative sample.²

Initially, we note the first requestor asks the city to answer questions in response to his second request. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision Nos. 561 at 8-9 (1990), 555 at 102. We assume the city has made a good-faith effort to do so.

Next, we note the submitted information contains minutes and an audio recording of open meetings of the board. Section 551.022 of the Open Meetings Act, chapter 551 of the Government Code, expressly provides that the “minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body’s chief administrative officer or the officer’s designee.” Gov’t Code § 551.022. In this instance, some of the submitted minutes are draft minutes. We note the minutes of a public meeting of a governmental body are public records when entered, are public in whatever form they exist, and public access may not be delayed until formal approval is obtained. Open Records Decision No. 225 (1979). Accordingly, we find that section 551.022 is applicable to some of the submitted information. Although you raise section 552.103 of the Government Code as an exception to disclosure of this information, we note that as a general rule, the exceptions to disclosure found in the Act are not applicable to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the submitted minutes and audio recording from open meetings of the board may not be withheld under section 552.103 of the Government Code.

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 employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

¹We note you also raise section 552.101 of the Government Code. However, this office has concluded section 552.101 does not encompass other exceptions found in the Act.

²We assume 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 those records contain substantially different types of information than that submitted to this office.

...

(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). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information at issue. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

You state, and have provided a pleading demonstrating, that a lawsuit styled *City of Nassau Bay, Texas v. H. Ray Barrett, and 1438 Kingstree Lane, in rem*, Cause No. 2013-10661, was filed in a district court of Harris County prior to the receipt of the instant requests for information and is currently pending. Based on our review of the pleading you provided and the submitted information, we find the submitted information is related to this pending litigation. Therefore, the city may withhold the remaining submitted information under section 552.103 of the Government Code.

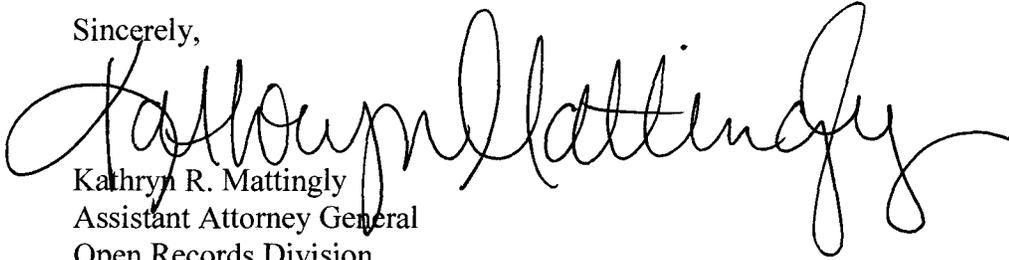
However, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See Open Records Decision Nos. 349 (1982), 320 (1982).* Thus, information that has either been obtained from or provided to all parties to 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 been concluded. *See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 (1982).*

In summary, the submitted open meeting minutes and audio recording must be released pursuant to section 551.022 of the Government Code. 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,

A handwritten signature in black ink, appearing to read 'Kathryn R. Mattingly', written in a cursive style. The signature is positioned above the typed name and title.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 488181

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)