



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2013

Mr. Jeffrey W. Giles
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2013-22388

Dear Mr. Giles:

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# 509529 (Houston GC Nos. 20900 and 20910).

The City of Houston (the "city") received a request for: (1) all documents studying the average amount a specified city drainage fee would cost citizens of the city; (2) all documents showing how the specified drainage fee has been disbursed; (3) documents showing the amount of the specified drainage fee that has been used to pay for wages and salaries of city employees; (4) copies of all e-mails sent or received by the mayor referencing the drainage fee prior to its passage; and (5) copies of all e-mails sent or received by the mayor relating to the solicitation of campaign contributions for her re-election campaign since she has been the mayor. You state the city will make information responsive to items 2 and 3 of the request available to the requestor for review. You state the city does not possess information responsive to items 1 and 5 of the request.¹ You claim the remaining requested information is excepted from disclosure under sections 552.103 and 552.107 of

¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.103 of the Government Code provides in 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). 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 showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request, 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). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103.

You inform us, and have provided documentation showing, that two lawsuits, styled *Little Nell Apartments, LP, HFI Regency Park, LP, and Windshire Apartments, LP v. City of Houston*, and *Daniel W. Krueger, in his official capacity as Director of Public Works and Engineering*, Cause No. 2012-09885, in the 129th Judicial District Court of Harris County and *Houston Belt & Terminal Railway Company, BNSF Railway Company, and Union Pacific Railroad Company v. City of Houston*, and *Daniel W. Krueger, in his official capacity as Director of Public Works and Engineering*, Cause No. 2012-62909, in the 61st Judicial District Court of Harris County were pending, prior to the receipt of the instant request for information. You state the information at issue is related to these pending

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

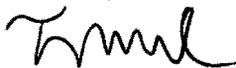
lawsuits. Based on your representations and our review, we agree that litigation to which the city is a party was pending on the date the city received the request. We further find that the submitted information relates to the pending litigation. Therefore, we conclude the city may withhold the information at issue under section 552.103 of the Government Code.³

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).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 509529

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.