



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 24, 2014

Ms. Hadassah Schloss
Open Records Coordinator
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2014-06803

Dear Ms. Schloss:

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# 520605.

The Texas General Land Office (the "GLO") received a request for information pertaining to the performance of contractors supervised by the GLO in connection with Hurricane Ike recovery. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. You state you have notified the City of Galveston (the "city") of the request for information and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information). We have received comments from the city. We have considered the submitted arguments and reviewed the submitted information.

Section 552.103 of the Government Code provides, in relevant 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). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) applies in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the requested information is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *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). A 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 the submitted information relates to a lawsuit styled *CDM Smith, Inc. v. City of Galveston*, that was pending in the District Court of Galveston County, 56th Judicial District, prior to the GLO's receipt of this request for information. You acknowledge the GLO is not a party to the pending lawsuit and, therefore, does not have a litigation interest in the matter for purposes of section 552.103. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (statutory predecessor to section 552.103 only applies when governmental body is party to litigation). In such a situation we require an affirmative representation from the governmental body whose litigation interests are at stake that it seeks to withhold the information at issue from disclosure under section 552.103, as well as a demonstration of how that exception applies to the information. We have received a letter from the city stating it no longer wishes to withhold the submitted information under section 552.103. Accordingly, based on this representation and our review, we find the GLO may not withhold any portion of the submitted information under section 552.103 of the Government Code on behalf of the city. As you raise no further exceptions to disclosure, the GLO must release the submitted information.

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,



Lana L. Freeman
Assistant Attorney General
Open Records Division

LLF/bhf

Ref: ID# 520605

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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