



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2014

Mr. J. Michael Brock
Attorney
City of New Boston
P.O. Box 785
New Boston, Texas 75570

OR2014-20844

Dear Mr. Brock:

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# 543326.

The City of New Boston (the "city"), which you represent, received a request for seven specified categories of information related to a specified address. You state some information does not exist.¹ You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103 provides, in part, the following:

- (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.

...

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(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 that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date the governmental body received 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, 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.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See Open Records Decision No. 551 at 4 (1990).*

You state, and provide documentation showing, prior to the date the city received the instant request for information, a lawsuit styled *Bayan Ghazzawi vs. City of New Boston, et al*, Cause No. 5:14-CV-65-MHS-CMC, was filed against the city in the United States District Court in the Eastern District Texas. Therefore, we agree litigation was pending on the date the city received the present request for information. You assert the submitted information is related to the pending litigation. Upon review, we agree the submitted information is related to the pending litigation. Accordingly, the city may withhold the submitted information under section 552.103 of the Government Code.

Generally, 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/eb

Ref: ID# 543326

Enc. Submitted documents

c: Requestor
(w/o enclosures)