



January 20, 2015

Ms. Christina Weber
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2015-01060

Dear Ms. Weber:

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# 550700 (W017663-102014).

The City of Arlington (the "city") received a request for all documents from January 2011 to November 2014 pertaining to a specified address. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state portions of the requested information were the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-07725 (2013). In Open Records Letter No. 2013-07725, we determined the city must release the court-filed document we marked pursuant to section 552.022(a)(17) of the Government Code, and, with the exception of information all opposing parties in the

¹Although you raise section 552.101 of the Government Code in conjunction with section 552.107 and Texas Rule of Evidence 503, this office has concluded section 552.101 does not encompass other exceptions found in the Act and does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Moreover, we note the proper exception to raise when asserting the attorney-client privilege in this instance is section 552.107 of the Government Code, rather than Texas Rule of Evidence 503. *See* Open Records Decision Nos. 676 at 1-2, 677 (2002).

litigation had seen or had access to, may withhold the remaining information under section 552.103 of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which this previous ruling was based. We conclude the city must continue to rely on Open Records Letter No. 2013-07725 as a previous determination and withhold or release the information in accordance with that ruling. See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your argument for the submitted information, which was not responsive to the previous request.

Section 552.103 of the Government Code, which provides 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 a showing 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 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, that prior to the city's receipt of this request, the city filed an eminent domain lawsuit styled *City of Arlington v. Fatmeh Hussein*, cause no. 2013-000739-3, in the County Court at Law No. 3 of Tarrant County. You state in this lawsuit the city seeks to acquire, by eminent domain, the property at issue in the request. Accordingly, we find that litigation was pending when the city received the present request

for information. We also find the information at issue relates to the pending litigation. Therefore, we conclude the city may withhold the submitted information under section 552.103 of the Government Code.²

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,



Daniel Olds
Assistant Attorney General
Open Records Division

DO/akg

Ref: ID# 550700

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not consider your remaining argument against disclosure.