



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 5, 2015

Ms. Deborah Lynne Klein
Assistant City Attorney
City of San Antonio
Office of the City Attorney
111 Soledad Street, 10th Floor
San Antonio, Texas 78205

OR2015-11070

Dear Ms. Klein:

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# 568710 (COSA File Nos. W074535, W075961).

The City of San Antonio (the "city") received two requests for video recordings and transcripts of depositions of named individuals for specified litigation. The city claims the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the claimed exception and reviewed the submitted information. We have also considered comments submitted by one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.103 of the Government Code provides in relevant 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). The governmental body has the burden of providing relevant facts and documents to show section 552.103 is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is 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, 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). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

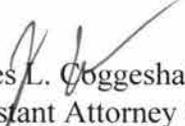
You state, and provide documentation showing, prior to the city's receipt of the requests for information, a lawsuit styled *Franco v. Sanchez*, Cause No. 2015-C1-0039 was filed in the 288th Judicial District Court of Bexar County, Texas, against the city. Thus, we agree litigation was pending when the city received the requests. However, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* ORD 551 at 4-5. When the opposing party has seen or had access to information relating to litigation, there is no interest in withholding that information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). The requested information consists of video recordings and transcripts of oral depositions that were taken in the presence of all the parties to the pending litigation. Accordingly, because the opposing parties to the litigation at issue have seen or had access to the requested information, there is no interest in withholding this information from public disclosure under section 552.103. Consequently, the city may not withhold the requested information under section 552.103. Therefore, the city must release the requested video recordings and transcripts.

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 568710

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)