



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 11, 2016

Mr. Marc J. Schnall  
Counsel for the Retama Development Corporation  
Langley & Banack, Inc.  
745 East Mulberry, Suite 900  
San Antonio, Texas 78212

OR2016-10803

Dear Mr. Schnall:

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# 609528.

The Retama Development Corporation ("RDC"), which you represent, received a request for three specified deposition transcripts. 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. We have also received and considered comments from counsel representing the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted information is not responsive to the request for information because it is not one of the specified deposition transcripts. This ruling does not address the public availability of any information that is not responsive to the request, and RDC is not required to release this information in response to this request.

Next, we note counsel for the requestor argues the responsive information must be released pursuant to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless it is excepted by section 552.108 of the Government Code or "made confidential under [the Act] or other law[.]" *Id.*

§ 552.022(a)(1). RDC has submitted the specified deposition transcripts. Upon review, we find this information is not a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, as contemplated by section 552.022(a)(1). Accordingly, the responsive information need not be released pursuant to section 552.022(a)(1) of the Government Code.

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.

*Id.* § 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 RDC's receipt of the request for information, a lawsuit styled *Texas Thoroughbred HBPA, Inc. v. Retama Development Corporation*, Cause No. 2013-CI-09606, was pending in the 285th Judicial District Court of Bexar County, Texas, against RDC. Thus, we agree litigation was pending when RDC received the request. 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 responsive information consists of transcripts of oral depositions that were taken in the presence of all the parties to the pending litigation.

Furthermore, we understand all parties to the pending litigation have access to the transcripts at issue. Accordingly, because the opposing parties to the litigation at issue have seen or had access to the responsive information, there is no interest in withholding this information from public disclosure under section 552.103. Consequently, RDC may not withhold the responsive information under section 552.103. As no other exceptions to disclosure have been raised, RDC must release the responsive 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](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,

A handwritten signature in black ink, appearing to read 'J. Behnke', with a long horizontal flourish extending to the right.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 609528

Enc. Submitted documents

c: Requestor  
(w/o enclosures)