



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 18, 2016

Mr. Jeff Tippens
Counsel for the City of Sunset Valley
Scanlan, Buckle, & Young P.C.
602 West 11th Street
Austin, Texas 78701-2099

OR2016-11422

Dear Mr. Tippens:

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# 610672.

The City of Sunset Valley (the "city"), which you represent, received a request for all correspondence and communications involving certain terms from named individuals during a specified time period. 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 representative sample of information.¹

Section 552.103 of the Government Code provides as follows:

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(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 city 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 is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas 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 city must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and submit documentation showing, prior to the date the city received the instant request, two lawsuits styled *City of Sunset Valley v. Austin Curling Center, L.C.C.*, Cause No. D-1-GN-15-000423 and *Austin Curling Center, L.L.C. v. City of Sunset Valley*, Cause No. D-1-GN-15-000515, were filed in the 200th District Court of Travis County and the 345th District Court, respectively. Upon review, we agree litigation was pending at the time of the present request for information. You state the information at issue, which pertains to a certain property, relates to the litigation because the litigation arises out of the property at issue. Based on these representations, we find the city has demonstrated the submitted information is related to pending litigation. Therefore, we find section 552.103(a) of the Government Code is applicable to the submitted information.

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 the opposing party in the litigation is not excepted from disclosure under section 552.103(a). We note the requestor, who is the opposing party in the litigation at issue, has seen or had access to some of the submitted information. Therefore, the city may not withhold this information, which we have marked, pursuant to section 552.103, and it must be released to the requestor. However, we agree the city may

withhold the remaining information at issue under section 552.103 of the Government Code. We note the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We note the information being released contains information subject to section 552.117(a)(1) of the Government Code.² Section 552.117(a)(1) applies to records a governmental body holds in an employment capacity and excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024, the city must withhold the information we have marked under section 552.117(a)(1). The city may not withhold this information under section 552.117 if the employee did not make a timely election to keep the information confidential.

In summary, with the exception of the information we have marked that was seen by the opposing counsel, which must be released, the city may withhold the submitted information under section 552.103 of the Government Code. Within the information being released, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code, if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code.

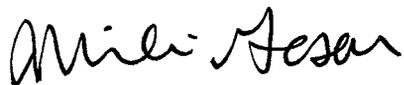
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 that reads "Mili Gosar". The signature is written in a cursive style with a large, prominent initial "M".

Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 610672

Enc. Submitted documents

c: Requestor
(w/o enclosures)