



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 19, 2016

Ms. Criselda Palacios
City Attorney
City of Edinburg
P.O. Box 1079
Edinburg, Texas 78540

OR2016-11579

Dear Ms. Palacios:

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# 611179.

The City of Edinburg (the "city") received a request for fifty-seven categories of information pertaining to the dispute between the requestor's client and a named entity. The city claims the submitted information is excepted from disclosure under sections 552.103, 552.104, 552.110, and 552.131 of the Government Code. Additionally, the city states release of the submitted information may implicate the proprietary interests of multiple third parties.¹ Accordingly, the city states, and provides documentation showing, it notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have also received comments from the

¹The third parties are CWA Architects, LP; Popeyes Louisiana Kitchen at The Shoppes; Shoppes at Rio Grande; Identity Architects; Texas Roadhouse Holdings, LLC; Genesis Design Group; JC Penney Company, Inc.; KA, Inc.; MCC and Associates, Inc.; Shoppes at Rio Grande Valley; ALJ Lindsey, LLC; Mr. Robert F. Vanney, Architect; Greenberg Farrow; ULTA; Corporate Creations Network, Inc.; Carters Retail; Franz Jeanes Lazo Cora & Assoc.; Ulta Beauty; H. Byk, P.E.; RGLA Solutions, Inc.; Hunt & Joiner, Inc.; Wells Doak Engineers, Inc.; Fitch, Inc.; Robert G. Lyon and Assoc.; A-On Fire Protection Engineering Corp.; ALJ Lindsey, LLC; Purdy McGuirre; Melden & Hunt, Inc.; Vaqueros Ventures; and GSR Andrade Architects.

requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information); *see also* ORD 542. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Initially, the city states it sought clarification of portions of the request. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). The city states it has not received a response to the request for clarification. Thus, for the portions of the requested information for which the city has sought but has not received clarification, we find the city is not required to release information in response to these portions of the request. However, if the requestor clarifies these portions of the request for information, the city must seek a ruling from this office before withholding any responsive information from the requestor. *See* Gov't Code § 552.222; *City of Dallas*, 304 S.W.3d at 387. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990). In this case, as the city has submitted information responsive to the request and has made arguments against disclosure of this information, we will address the applicability of the city's arguments to the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any third party has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest any of the third parties may have in the information.

We note the submitted information contains video recordings of open meetings of the city council. Section 551.022 of the Open Meetings Act, chapter 551 of the Government Code, expressly provides the "minutes and recordings of an open meeting are public records and

²We 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.

shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee." Gov't Code § 551.022. Although the city raises sections 552.103, 552.104, 552.110, and 552.131 of the Government Code, the general exceptions to disclosure found in the Act are not applicable to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the city must release the submitted video recordings pursuant to section 551.022 of the Government Code.

Section 552.103 of the Government Code provides:

(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). When a governmental body receives a request for information that relates to pending or anticipated litigation, it may raise section 552.103 as an exception to disclosure in order to protect its litigation interests. *See* Gov't Code 552.103; Open Records Decision No. 551 at 4 (1990) (noting that predecessor to section 552.103 protects discovery process and avoids interference in matters properly resolved in court by excepting from disclosure information when access to such material is more appropriately sought through discovery). The governmental body claiming this exception bears the burden of providing relevant facts and documents to demonstrate the applicability of the exception. 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, 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.); ORD 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The city has provided documentation showing that, prior to the city's receipt of the present request for information, a lawsuit styled *The Shoppes at Rio Grande Valley, L.P. v. Simon Property Group (Texas), L.P.*, No. C-3145-15-D, was filed in the 398th Judicial District Court in Hidalgo County, Texas. Additionally, the city informs us, and has provided

documentation showing, the city filed a petition in intervention and is now also a party to this lawsuit. We therefore agree that litigation was pending on the date the city received the request. We further find the remaining information relates to the pending litigation. Accordingly, the city may withhold the remaining information pursuant to section 552.103 of the Government Code.³

We note, however, that once the information at issue has been obtained by all parties to the anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information at issue that has either been obtained from or provided to all opposing parties in the anticipated 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 concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the city must release the submitted video recordings of open meetings of the city council pursuant to section 551.022 of the Government Code. The city may withhold the remaining information under section 552.103 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 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/som

³As our ruling is dispositive, we need not address the city's remaining arguments against disclosure of this information.

Ref: ID# 611179

Enc. Submitted documents

c: Requestor
(w/o enclosures)

32 Third Parties
(w/o enclosures)