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ATTORNEY GENERAL OF TEXAS

July 5, 2016

Ms. Erica E. Valladares
Counsel for the City of Eagle Pass
Langley & Banack
745 East Mulberry, Suite 900
San Antonio, Texas 78212

OR2016-15231

Dear Ms. Valladares:

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# 617076 (ORR# 2016-65).

The City of Eagle Pass (the "city"), which you represent, received a request for minutes and sign-in sheets of all meetings pertaining to a specified study, including meetings with specified officials and a named entity. 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.

Initially, we note some of the submitted information is not responsive to the present request because it does not consist of the requested meeting minutes or sign-in sheets. This ruling does not address the public availability of the non-responsive information, which we have marked, and the city need not release it in response to this request.

We note the responsive information contains minutes from public meetings. The minutes from public meetings are specifically made public under the provisions of the Open Meetings Act, chapter 551 of the Government Code. *See* Gov't Code § 551.022 (minutes of open meeting are public records and shall be available for public inspection and copying upon request). Although you seek to withhold this information under section 552.103 of the Government Code, the exceptions to disclosure found in the Act generally do not apply to information other statutes make public. *See* Open Records Decision Nos. 623 at 3

(1994), 525 at 3 (1989). Accordingly, the minutes must be released pursuant to section 551.022 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.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) 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. *See 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551.

To establish litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing the claim that litigation may ensue is more than mere conjecture." *See* Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* In Open Records Decision No. 638 (1996), this office stated a governmental body has met its burden of showing litigation is reasonably anticipated when it received a notice of claim letter, and the governmental body represents the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act ("TTCA"), Civ. Prac. & Rem. Code, ch. 101, or an applicable municipal ordinance.

You state, and submit documentation showing, prior to the city's receipt of the instant request, the city received a notice of claim letter from the requestor on behalf of his clients. You inform us the claim letter complies with the TTCA. You state the information at issue is directly related to the anticipated litigation. Based on your representations and our review, we find you have demonstrated the remaining responsive information is related to litigation

reasonably anticipated at the time the city received the request for information. Therefore, we find the city may withhold the remaining responsive information under section 552.103 of the Government Code.

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 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 minutes pursuant to section 551.022 of the Government Code. The city may withhold the remaining responsive 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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/bw

Ref: ID# 617076

Enc. Submitted documents

c: Requestor
(w/o enclosures)