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ATTORNEY GENERAL OF TEXAS

February 7, 2022

Ms. Hadassah Schloss
Director, Open Government
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2022-03281

Dear Ms. Schloss:

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# 928605 (PIR No. 22-0158).

The Texas General Land Office (the "GLO") received a request for certain information pertaining to a specified program regarding a specified housing subdivision. You state the GLO released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.160 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the GLO has marked a portion of the submitted information as not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the GLO need not release non-responsive information to the requestor.

Next, we note the GLO asked the requestor to clarify a portion of the information requested. *See* Gov't Code § 552.222 (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *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). You do not indicate the GLO has received a response to the request for clarification. 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 instance, the GLO has submitted information it believes is responsive to the request and made arguments against disclosure of this information. Thus, we assume the GLO has made a good-faith effort to relate the request to information it holds, and we will address the applicability of the submitted arguments to the information. Accordingly, the GLO has no obligation at this time to release any information that might be responsive to this portion of the request. However, if the GLO receives clarification and wishes to withhold any of the information encompassed by the clarified request, the GLO must request another decision from this office at that time. *See* Gov't Code § 552.222; *City of Dallas*, 304 S.W.3d at 387.

Section 552.103 of the Government Code provides, in part, the following:

(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 the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (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. *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.

You state, and provide documentation showing, prior to the GLO's receipt of the instant request, a lawsuit styled *Texas Low Income Housing Information Service, Inc. v. Texas General Land Office*, Cause No. D-1-GN-19-005724, was filed and is currently pending against the GLO in the 201st Judicial District Court of Travis County, Texas. Therefore, we agree litigation was pending on the date the GLO received the present request for information. You also state the information at issue pertains to the substance of the lawsuit claims. Based upon your representations and our review, we find the information at issue

is related to the pending litigation. Accordingly, we conclude the GLO may withhold the submitted responsive information under section 552.103(a) of the Government Code.¹

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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it 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 at 3 (1982).

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/eb

Ref: ID# 928605

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of the responsive information.