



CITY OF HOUSTON

Legal Department

Annis D. Parker

Mayor

October 22, 2013

The Honorable Greg Abbott
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Attention: Open Records Division

Re: Public Information Act request received October 1, 2013 from Thomas A. Bazan for five categories of information pertaining to the Drainage Fee.
GC No. 20910.

Dear General Abbott:

This is a follow-up to my letter dated October 15, 2013. See **Exhibit 1A**. We note the previous letter was mislabeled with GC No. 20900. Please refer to GC No. 20910 in any future correspondence concerning this request. The City of Houston (the "City") received the above-referenced request on October 1, 2013. See **Exhibit 1**. The City will make information responsive to items 2 and 3 of the request available to the requestor for review. The City does not possess information responsive to items 1 or 5 of the request. By copy of this letter, the City is informing the requestor that the City believes a portion of the requested information (**Exhibit 2**) is excepted from public disclosure under sections 552.103 and 552.107 of the Government Code. Because the information responsive to item 4 of the request is voluminous, a representative sample has been provided for your review. See **Exhibit 2**.

Section 552.103 of the Texas Government Code

Section 552.103 provides, in pertinent part, that:

(a) Information is excepted from the requirements of Section 552.021 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 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 requester applies to the officer for public information for access to or duplication

of the information.

GOV'T CODE § 552.103(a), (c). To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). To show the applicability of section 552.103(a), the City must demonstrate that (1) litigation is pending or reasonably anticipated, and (2) the information at issue relates to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston[1st Dist.] 1984, writ ref'd n.r.e.). The City must meet both prongs of this test for information to be excepted under section 552.103(a).

On the date the City received the instant request for information, the City was involved in two pending cases styled *Little Nell Apartments Ltd. P'ship v. City of Houston*, cause no 2012-09885, in the 129th Judicial District Court of Harris County, Texas, and *Houston Belt & Terminal Ry. Co. v. City of Houston*, cause no 2012-62909, in the 61st Judicial District Court of Harris County, Texas. See **Exhibits 2A and 2B**, which are not responsive to the instant request. Because litigation was pending at the time the City received the request, the City fulfills the first prong for withholding the information at issue under section 552.103.

The responsive information relates directly to the basis of the ongoing litigation, fulfilling the second prong of the test. The responsive information pertains to City Ordinance No. 2011-254, which concerns city drainage. This ordinance is the subject of both of the above referenced cases. The information contained in **Exhibit 2** will likely be used in litigation by an opposing party. As such, the release of the responsive information would hurt the City's ability to protect its position in the pending litigation. Because litigation was pending against the City at the time the request was received, and the responsive information directly pertains to that litigation, the City believes that it may withhold **Exhibit 2** from public disclosure pursuant to section 552.103 of the Government Code.

Section 552.107 of the Texas Government Code

Additionally, the City believes **Exhibit 2** is protected under section 552.107(1) of the Texas Government Code, which protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. Tex. R. Evid. 503(b)(1). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. Tex. R. Evid. 503(b)(1). Lastly, the attorney-client privilege applies only to a confidential communication, *id.*, meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." Tex. R. Evid. 503(a)(5).

Exhibit 2 consists of communications among City attorneys, City employees in their capacity as clients, and representatives of Renew/Rebuild Houston and the Houston Parks Board sharing a privity of interest with the City. See **Exhibit 2C**, which is not responsive to the instant request. Renew/Rebuild Houston and the Houston Parks Board were created by City ordinances for the purpose of furthering specific City interests and so share a privity of interest with the City. See **Exhibits 2D and 2E**, which are not responsive to the instant request. The communications at

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issue were made in furtherance of the rendition of professional legal services to the City. Furthermore, these communications were not intended for third parties, and the confidentiality of these communications has been maintained. The City has not waived its attorney-client privilege in this instance. For these reasons, **Exhibit 2** should be withheld from public disclosure under section 552.107 of the Government Code.

The City respectfully requests a ruling on this matter. Please do not hesitate to contact me at 832-393-6491 if you need additional information. Please include **GC No. 20910** in any future correspondence concerning this request.

Sincerely,


Jeffrey Giles
Assistant City Attorney

JG/nj

Enclosure(s)

cc: Sent via electronic email to:
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