



CITY OF SAN ANTONIO

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May 23, 2019

Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Via First Class Mail

Re: Request for Ruling

Requestor: Hiram Sasser
Organization: City of San Antonio
Date request received: April 17, 2019
COSA File No.: W260956-041719

Dear Assistant Attorney General:

On April 17, 2019, the City of San Antonio received a public information request from Hiram Sasser of the First Liberty Institute for the following information:

Description: • Any and all San Antonio City Council staff reports, recommendations, comments, or assessments of any kind whatsoever relating to the January 18, 2018 Request for Proposal for Food, Beverage, and Retail Prime Concessionaire for San Antonio International Airport (RFP 18-014).

• Any and all San Antonio City Council staff reports, recommendations, comments, or assessments of any kind whatsoever relating to the proposed San Antonio International Airport Food & Beverage Prime Concession Agreement between the City of San Antonio and Paradis Lagardère or relating to the proposed ordinance approving such agreement, considered as Agenda Item 15 in the March 21, 2019 City Council Meeting.

• Any and all communications, notes, or other documents of any kind whatsoever, including but not limited to emails, text messages, notes, statements, letters, reports, and comments, produced by the San Antonio City Council, any San Antonio City Council member, the Mayor of San Antonio, or any employee or staff member of the City Council, a City Council member, or the mayor regarding or relating to the aforementioned proposed ordinance considered as Agenda Item 15 in the March 21, 2019 City Council Meeting.

• Any and all communications, notes, or other documents of any kind whatsoever, including but not limited to emails, text messages, notes, statements, letters, reports, and comments, produced since January 1, 2012 by the San Antonio City Council, any San Antonio City Council member, the Mayor of San Antonio, or any employee or staff member of the City Council, a City Council member, or the mayor regarding or relating to Chick-fil-A.

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A copy of that request is attached to this letter as **Attachment I**.

On April 30, 2019, the City of San Antonio requested clarification regarding Hiram Sasser's request and received clarification on May 2, 2019. Copies of the clarification request and response are attached as **Attachment II-A and II-B**, respectively.

Under Texas Government Code § 552.301, a governmental body must submit a request for a ruling from the Office of the Attorney General to obtain authority to withhold documents from disclosure under the exceptions listed in Subchapter C, § 552.101 - .158. The request for ruling must be submitted to the Texas Attorney General's Office within 10 business days after receipt of the request.

As noted, the City of San Antonio received Hiram Sasser's public information request on April 17, 2019. The City of San Antonio requested clarification and received clarification on May 2, 2019. Therefore, the request was assigned a receipt date of May 2, 2019. Accordingly, the tenth business day for this request is May 16, 2019, and the fifteenth business day is May 23, 2019.

The City submitted a "10-day" letter to your office by U.S. Mail on May 16, 2019 and provided a copy of that letter to the requestor as well (**Attachment III**). This letter serves as the City's "15-day" letter to your office.

The City of San Antonio will be releasing responsive documents that are available to the public, or have been released through some other forum, to the requestor. However, the City seeks to withhold certain records pursuant to section 552.103 "*Litigation or Settlement Negotiations Involving the State or a Political Subdivision*" pursuant to the Texas Public Information Act.

In accordance with Section 552.301(e)(1)(D) & (2), the City is submitting representative samples of the specific information requested, which the City seeks to withhold, and arguments supporting the asserted exceptions. (**Attachment IV – Copy of Records Submitted for AG Review**)

Please note that the City of San Antonio previously provided a brief regarding the same or similar information and documents under a request submitted by Cleve Doty of the Texas Attorney General's Office on May 3, 2019 under our record number W260203-041119. If possible, this brief and arguments should be considered along with that submitted brief.

I. Factual Background

On March 21, 2019, the San Antonio City Council considered an item on its publicly posted agenda regarding a proposal submitted by Paradies Lagadere (Paradies) for a concession contract for the San Antonio International Airport. The proposal included a Chick-fil-A fast food concept as part of the overall package. After an open and transparent deliberation and vote regarding the award of the concession contract, the City Council determined that the contract should be awarded to Paradies, but directed staff to work with Paradies to replace the Chick-fil-A concept within the proposal with some other comparable concept suitable for the designated category. A recording of the meeting can be viewed at: <https://sanantoniotx.new.swagit.com/videos/26748>

On March 28, 2019, Attorney General Ken Paxton issued a press release (**Attachment FB-1**) that stated he sent a letter to the Mayor and City Council advising them that “he is opening an investigation surrounding the city’s decision to exclude Chick-fil-A from a concession contract” and that he also submitted a second letter to the Secretary for the U.S. Department of Transportation requesting that they also “open an investigation” into the same matter. The referenced letters to the Mayor and Council, and the Department of Transportation are attached respectively as **Attachments FB-2 and FB-3**.

On March 28, 2019, Hiram Sasser, General Counsel for the First Liberty Institute, and the requestor in this instance, submitted a similar letter to the Secretary for the Department of Transportation also requesting an investigation and a suspension of federal grants to the City of San Antonio (**Attachment FB-4**).

On April 11, 2019, Attorney General Paxton issued another press release stating that his office had sent a second letter to the Mayor and City Council as an “open records request for documents related to the Office of the Attorney General’s investigation of the City’s decision to exclude Chick-fil-A from the San Antonio International Airport” (**Attachment FB-5**). The letter referenced within the April 11 press release requesting records has been attached as **Attachment FB-6**.

On April 17, 2019 the City received a request for information from Mr. Sasser related to the Paradies concession contract (see **Attachment I**).

II. Argument Against Release

Litigation Exception (Section 552.103, Texas Public Information Act)

The Public Information Act Section 552.103, *Litigation or Settlement Negotiations Involving the State or a Political Subdivision*, provides 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 a political subdivision, as a consequence of the person’s office or employment, is or may be a party.
- (b) For purposes of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.
- (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.

Therefore, for the City to prevail under this exception, it must clearly establish that 1) litigation involving the City is pending or reasonably anticipated and 2) the information must relate to that litigation. What constitutes "pending or reasonably anticipated litigation" is made on a case-by-case basis. The following information supports the City's contention of "pending or reasonably anticipated" litigation involving the publicly announced investigation of the City of San Antonio by the Office of the Attorney General:

- The Office of the Attorney General has issued two press releases clearly stating that the office is investigating the City's decision to exclude Chick-fil-A from the San Antonio International Airport (please see **Attachments FB-1 and FB-5**).
- The Office of the Attorney General has submitted two letters to the Mayor and City Council for the City of San Antonio that clearly state that the office is investigating the City's decision to exclude Chick-fil-A from the San Antonio International Airport (please see **Attachment FB-2 and Attachment FB-6**).
- The Office of the Attorney General has actively encouraged a federal department to open its own investigation into the same matter being addressed by the current request for information (please see **Attachment FB-3**).
- The requestor has submitted a letter to the Department of Transportation asserting similar claims and a call for an investigation (please see **Attachment FB-4**), creating an impression that it is aligned with the litigation interests of the State of Texas.

Based on the above, it is reasonable to surmise that the Office of the Attorney General is actively investigating the City of San Antonio in preparation for possible legal action related to the information being requested. Allowing other entities to use of the Texas Public Information Act as a means for collecting information when litigation is anticipated provides an opportunity for release and disclosure of information that is sought by the prospective litigant from the third-party requestor. Mr. Sasser's submission of a letter to the Secretary of the Department of Transportation also creates an impression that his organization would be a willing conduit to provide information to potential litigants outside of an appropriate discovery process. This undermines the litigation process and robs a government entity of its legal protections and reciprocal discovery afforded under state law.

Based on the above, all material requested by the subject open records request as evidenced by the representative samples submitted under **Attachment IV** should be excepted from release.

III. Summary

The City is seeking the Attorney General's concurrence that the requested information must not be released to the requestor. The City asserts that the requested information is excepted from release in accordance with Texas Public Information Act, Section 552.103 (Litigation exception).

Sincerely,



Edward F. Guzman
Deputy City Attorney
City of San Antonio

cc: Hiram Sasser
ghorne@firstliberty.org

**w/ Attachments I – III,
and Attachments FB-1-6**