



December 9, 1999

Ms. Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

OR99-3570

Dear Ms. Stiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130271.

The Texas Department of Housing and Community Affairs (the "department") received a request for records pertaining to notices of violation issued by the department, administrative hearings conducted by the department, and the violations of certain statutes and regulations and the outcome of those violations. You contend that the requested information, a representative sample of which you have submitted to this office, is excepted from disclosure under section 552.103 of the Government Code.

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.). The term "litigation" includes contested cases conducted under the Administrative Procedure Act, chapter 2001 of the Government Code. Open Records Decision No. 588 (1991). You contend that the requested information relates to pending litigation to which the department is party for the following reasons:

On September 17, 1999, the Department forwarded a Notice of Violation to [the requestor] in which the Department alleged violations of Tex. Rev. Civ. Stat. Ann. art. 5221f, § 7(b); 10 T.A.C. § 80.123(b); and 10 T.A.C. § 80.125(b). Beginning on the evening of September 23, 1999, and after receipt of the Notice of Violation, [the requestor] sent by facsimile a request for hearing and five related requests for public information. The requests involve previous Department actions concerning the identical rule sections and statutory sections cited in the

allegations against [the requestor]. The Department contends that [the requestor's] five requests are tantamount to discovery requests. He is attempting to discover information he feels is relevant to his defense in the Department's administrative action and is attempting to use the Public Information Act as a shortcut to formal discovery.

Based on your representations, we conclude that in this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103. The requested records therefore may be withheld at this time,¹ with the following exceptions.

The submitted documents include agreed and final orders issued by the department. These orders and any attachments incorporated therein are made public by statute and must be released to the requestor. Gov't Code § 2001.004 (state agency shall make available for public inspection all final orders, decisions, and opinions); Open Records Decision No. 161 (1977) and authorities cited therein (information made public by statute not protected by "litigation" exception); *see also* Gov't Code § 552.022(a)(12) ("final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases" not excepted from public disclosure unless made confidential by law).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

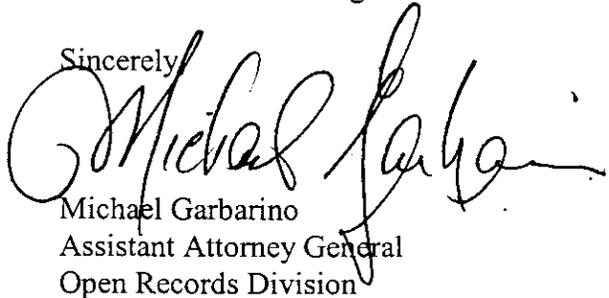
¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/RWP/jc

Ref: ID# 130271

Encl. Submitted documents

cc: Mr. Greg Hickman
Vice President
The Alternative Realty Group, Inc.
Post Office Box 187
Conroe, Texas 77305
(w/o enclosures)