



January 24, 2000

Ms. Sarajane Milligan
Assistant County Attorney
Harris County, Texas
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2000-0207

Dear Ms. Milligan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 131663.

The Harris County Sheriff's Department (the "department") received a request for information relating to certain specified personnel matters. You have submitted representative samples of the responsive information for our review.¹ You claim that the submitted documents are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents you submitted.

As amended by the Seventy-sixth Legislature, section 552.103 of the Government Code, the "litigation exception," provides in relevant part:

(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

¹We assume that the "representative sample" of records that you submitted to this office is genuinely representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This letter ruling does not address, and therefore does not authorize the department to withhold, any records whose contents are substantially different than those of the documents you submitted.

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 (West Supp. 2000). To sustain a claim under section 552.103, a governmental body must establish: (1) that litigation is either pending or reasonably anticipated, and (2) that the information in question relates to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481-83 (Tex. App. – Austin 1997, no pet.); *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 (1990). The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish that litigation is reasonably anticipated, a governmental body must provide this office with “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *Id.* Among other examples, this office has concluded that litigation was reasonably anticipated where the opposing party took the following objective steps toward litigation: (1) filed a complaint with the Equal Employment Opportunity Commission (“EEOC”), *see* Open Records Decision No. 336 (1982); (2) hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and (3) threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981). In this instance, you inform this office that the information in question relates directly to matters that were the subject of a recent investigation of the department by the EEOC. You further state that, as a result of the outcome of the investigation, the department anticipates forthcoming litigation with the EEOC. Based on your representations and our review of the responsive records and other documentation that you submitted, we agree that the requested information relates to anticipated litigation and is therefore excepted from disclosure under section 552.103 of the Government Code. *See also* Open Records Decision Nos. 638 (1996), 386 (1983), 281 (1981), 270 (1981).

In reaching our conclusion, we rely on your representation that the opposing party to the anticipated litigation has not had access to any of the requested information. To the extent that the opposing party has seen or had access to any of the requested information, there is no interest under section 552.103 in withholding that information from public disclosure. *See* Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). However, any requested information that is confidential by law must not be released even at the conclusion of the litigation. *See* Gov't Code §§ 552.101, 552.352.

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

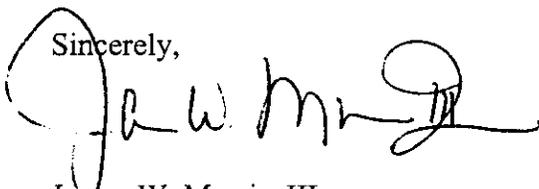
from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, 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).

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,

A handwritten signature in black ink, appearing to read 'J.W. Morris III', written over a circular stamp or mark.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ch

Ref: ID# 131663

Encl. Submitted documents

cc: Mr. Godfrey T. Eta
2106 Laurel Oaks Drive
Houston, Texas 77014
(w/o enclosures)