



January 27, 2000

Ms. Judith Hunter  
Paralegal  
City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627-0409

OR2000-0278

Dear Ms. Hunter:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#131539.

The City of Georgetown (the "city") received a request for the following information related to the arrest of a Williamson County resident on December 30, 1998:

- 1) a copy of the arrest report;
- 2) a copy of the first page of the offense report;
- 3) a copy of the Georgetown Police Department's policies regarding proper procedure for arrest and detention of a suspect on a warrant issued by another law enforcement agency;
- 4) a statement regarding the application of the above referenced policy to the arrest of the particular Williamson County resident; and
- 5) the number of persons in 1998 and 1999 mistakenly arrested by Georgetown police on outstanding warrants from other law enforcement agencies.

You explain that in response to item three of the request, the city has provided to the requestor a copy of the Georgetown Police Department's policy on general arrest procedure. You further explain that the city does not have information responsive to items two, four, and five of the request. You claim, however, that the arrest report in item one of the request is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The

governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (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 at 4 (1990). The city must meet both prongs of this test for information to be excepted under section 552.103(a).

You inform us that the city is a defendant in a pending case brought by the arrestee in United States District Court in Austin, Texas. However, you have not made the requisite showing that the requested information relates to the pending litigation for purposes of section 552.103(a). Therefore, we conclude that you may not withhold the requested information under section 552.103. You must release the arrest report to the requestor.

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.

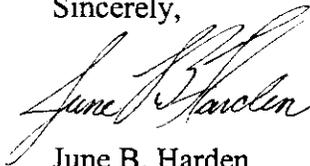
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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 Dep't 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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/KSK/ljp

Ref: ID# 131539

Encl. Submitted documents

cc: Mr. Mark Bruce  
Reporter  
The Williamson County Sun  
707 Main Street  
Georgetown, Texas 78626  
(w/o enclosures)