



March 27, 2000

Ms. Bonnie Lee Goldstein  
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P.  
3000 Bank One Center  
1717 Main Street  
Dallas, Texas 75201-4335

OR2000-1192

Dear Ms. Goldstein:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133560.

The City of Highland Village (the "city"), which you represent, received a request for information regarding the Tartan Village site plan. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that, based on the draft of the Plaintiff's Original Petition for Declaratory Judgment and correspondence sent to the city by the potential plaintiff's counsel, litigation against the city is reasonably anticipated. Thus, you seek to withhold the agenda briefings submitted by staff to the city council and the Planning and Zoning Commission which pertain specifically to the Tartan Village site plan. In addition, you note that the requestor in this instance is named as one of the plaintiffs in the anticipated litigation.

Section 552.103(a) of the Government Code as amended by the Seventy-sixth Legislature 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.

Section 552.103(a) was intended to prevent the use of the Public Information Act as a method of avoiding the rules of discovery in litigation. Attorney General Opinion JM-1048 at 4 (1989). The litigation exception enables a governmental body to protect its position in

litigation by requiring information related to the litigation to be obtained through discovery. Open Records Decision No. 551 at 3 (1990)<sup>1</sup>. However, to secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information “relates” to a pending or reasonably anticipated litigation. Open Records Decision No. 551 (1990).

The city, therefore, has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in this 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, 481 (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). We conclude that you have made the requisite showing that litigation is reasonably anticipated and that the requested information relates to the anticipated litigation for purposes of section 552.103(a). Therefore, the city may withhold the requested information under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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).

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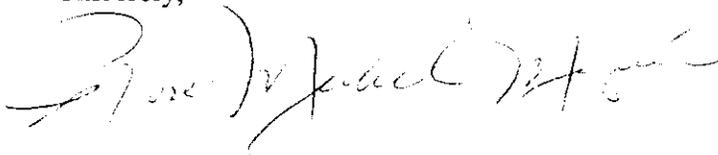
<sup>1</sup>Attorney General Opinion JM-1048 at 3 (1989) (“the fundamental purposes of the Open Records Act and of civil discovery provisions differ”); Open Records Decision No. 551 at 3-4 (1990) (discussion of relation of Open Records Act to discovery process).

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,



Rose-Michel Munguía  
Assistant Attorney General  
Open Records Division

RMM/jc

Ref: 133560

Encl. Submitted documents

cc: Ms. Mary Anne Wall  
104 Edinburgh Court  
Highland Village, Texas 75077-3412

(w/o enclosures)