



April 27, 2000

Ms. Sheila I. Jalufka
Barney L. Knight & Associates
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2000-1654

Dear Ms. Jalufka:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135693.

The City of Jonestown (the "city"), which you represent, received a request for nineteen items, including contracts, correspondence, agendas, minutes, list of employees, budgets, proposals, grants, and annexation information. The city asserts that it has made available to the requestor the information responsive to the following items: 2-4, 6-15, and 17-18.¹ However, the city seeks to withhold information pertaining to the following requests:

1. All transactional documents, contracts, and/or agreements, and related correspondence, for the past five (5) years, between the [city] and: (a) Sam G. Billings; (b) S.G. Billings Real Estate Company; (f) Marick Custom Homes; (j) Rick Spillman, individually or as owner, agent or representative of Marick Custom Homes; and (k) Ray Litton.²

5. All applications, correspondence, and any other documents regarding or relating to the expansion of Dutchman's Landing Marina for the past five (5) years.

¹We note that you reference Open Records Letter No. 2000-0628 in which this office held that some minutes, budgets, and expenditures requested here were public information under section 552.022 of the Government Code.

²We note that item 1 includes a request for all documents between the city and specified individuals listed as a. through p. Because you have only listed the persons in a., b., f., j., and k., we assume that you have released information pertaining to the other individuals if such documents exist.

16. All information regarding annexations or extensions of the City's territorial jurisdiction since 1997, including but not limited to, staff reports, public postings, public comment, applications from requesting parties, meeting minutes of the Planning Commission and City Council at which the annexations were discussed or considered, all resolutions, all ordinances implementing annexation or other action taken, field notes/sketches for each approved annexation area and any agreements entered into with parties requesting annexation. Copies of the City's jurisdictional map for 1997-2000, showing corporate and extraterritorial jurisdictions.³

19. All special use applications and related materials and permits issued by the City in accordance therewith for the past five (5) years. All land development and building applications and related materials and subsequent approvals and/or permits for gasoline stations, including but not limited to full service and those with attached convenience stores, issued or denied during the past five (5) years.

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 representative samples of information.⁴

Section 552.103(a) provides as follows:

(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.

³You assert that items in request number sixteen not covered by this request for a decision will be released. In your brief, you list staff reports, applications from requesting parties, and any agreements entered into with parties requesting annexation, as the documents you seek to withhold.

⁴In 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 Nos. 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.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong 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 (Tex. App.–Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). Further, litigation must be pending or reasonably anticipated on the date the requestor applies to the public information officer for access. Gov't Code § 552.103(c).

You have submitted an original petition which demonstrates that Sandy Creek Investors, Ltd. (“Sandy Creek”), a land developer, has filed suit against the city and other individuals for failing to provide Sandy Creek with the necessary permits to construct a marina. Having reviewed the pleading, we conclude that litigation is pending and that the submitted information relates to the pending litigation.

However, we note that some of the submitted documents are expressly made public by section 552.022 of the Government Code. Section 552.022 provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body

Section 552.103 is a discretionary exception under the Public Information Act and is, therefore, not other law that makes the submitted information confidential. *See* Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body’s position in litigation and does not itself make information confidential). The submitted information contains a real estate contract for the purchase of land by the city and receipts reflecting the receipt or expenditure of public funds which we believe are public under section 552.022(a)(3).

The submitted information also contains city council minutes from the City of Austin and two resolutions passed by the city which are public information. *See* Open Records Decision Nos. 551 at 2-3 (1990), 221 (1979) (finding that ordinances and laws are among the most open of records). Further, some of the documents appear to have been filed with the county clerk and are therefore public. *See* Local Gov't Code § 191.006 (county clerk's records are public); *see also* *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). We have marked the public information that you must release.

We note that if the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). Further, section 552.103 does not authorize the withholding of information which has already been made available to the public. Open Records Decision No. 436 (1986). We have marked the documents that you must release because the opposing party has seen the document or the information has already been made available to the public. The city may withhold the remaining documents under section 552.103. We note that the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982). However, if the records contain information that is confidential by law, you must not release such information even at the conclusion of the litigation. Gov't Code §§ 552.101, .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).

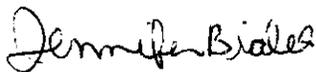
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

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,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/nc

Ref: ID# 135693

Encl. Marked documents

cc: Mr. J. Bradley Greenblum
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(w/o enclosures)