



January 25, 2001

Mr. John Steiner
Division Chief
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2001-0299

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143556.

The City of Austin (the "city") received a request for 16 categories of information related to Stratus Properties ("Stratus") and Circle C Land Development Corp. ("Circle C"). You inform us that much of the responsive information will be made available to the requestor, but claim that a limited amount of the requested information is excepted from disclosure under sections 552.103, 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show 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).

You assert that all of the submitted information relates to pending and threatened litigation against the city. In support, you inform us that the city is a defendant in Cause No. 97-13994,

Circle C Land Corporation v. City of Austin, now pending in the 53rd Judicial District Court, Travis County, Texas. You state that Circle C, a corporate affiliate of Stratus, has sued the city seeking reimbursement of \$10 million “in so-called ‘MUD reimbursables.’” You inform us that case is set for trial in January, 2001. You further inform us that “settlement negotiations over Stratus’ MUD reimbursable claim have become intertwined during 1999 and 2000 with the settlement negotiations concerning Stratus’ threats of litigation concerning their claimed rights under Chapter 245 of the Local Government Code (often referred to as House Bill 1704).”

Enacted in 1999, Chapter 245 of the Local Government Code is entitled “Issuance of Local Permits” and provides at subsection 245.002(a) that “[e]ach regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the permit is entitled.” Local Gov’t Code §245.002(a). *See* Acts 1999, 76th Leg., ch. 73, § 2. In this regard, you inform us that:

Stratus claims that HB 1704 allows Stratus to develop three different areas in Southwest Travis County under older, less stringent City water quality ordinances. Those areas are known as Barton Creek, Lantana and Circle C. Much of the withheld material concerns the City’s analysis of Stratus’ HB 1704 claims. Stratus’ threats that, absent a settlement, they would attempt to enforce their HB 1704 claims have been repeated and specific.

You then cite three examples of such threats. Finally, you assert that the city and Stratus “have been to the Texas Supreme Court twice and the Fifth U.S. Court of Appeals once already concerning the City’s regulation of these very same lands,” and that “[t]he City takes Stratus’ threats of litigation very seriously, and is trying to resolve Stratus’ claims by settlement.”

On this basis, and upon review of the information submitted to this office, we conclude that you have established the applicability of section 552.103(a) to the information you seek to withhold. Therefore, the city may withhold the submitted information at this time pursuant to section 552.103(a) of the Government Code. 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. We also note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Because section 552.103 is dispositive, we do not address your other claimed exceptions.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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 that reads "Michael A. Pearle". The signature is written in a cursive, flowing style.

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 143556

Encl. Submitted documents

cc: Mr. Grant Godfrey
Save Our Springs Alliance
P.O. Box 684881
Austin, Texas 78768
(w/o enclosures)