OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

August 29, 2001

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

OR2001-3827

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# 151335.

The City of Georgetown (the "city") received four separate requests from the same requestor for information relating to the Dove Springs Waste Water Treatment Plant. You inform us that you have already released information responsive to one request. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You inform us that some of the responsive information has been the subject of one or more prior rulings from this office, and is presently the subject of two pending lawsuits concerning the required public release of that information.[1] You state that because of the pending lawsuits related to this information you have not enclosed those documents with this request. Accordingly, we decline to issue a ruling regarding this particular information, and will allow the courts to resolve the issue of whether this information must be released to the requestor.

You assert that the submitted information is excepted from disclosure under section 552.103 of the Government Code. 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. To show that section 552.103 is applicable, the governmental body must demonstrate that: 1) litigation is pending or reasonably anticipated

[1] *In re City of Georgetown v. Cornyn*, Cause No.GV000536, in the 126th District Court of Travis County, Texas (filed May 5, 2000, pet. granted); *In re City of Georgetown v. Cornyn*, Cause No.GV001865, in the 353rd District Court of Travis County, Texas.

at the time of the request, 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).

You inform us of the following:

> The City is currently involved in litigation regarding the subject of this request, the Dove Springs Waste Water Treatment Plant. Two cases, *Ethel Domel and Norman Domel v. City of Georgetown, Texas*, Cause No. 99-297, and *In Re: The City of Georgetown and George Russell,* Cause No. 00-0453, remain pending in the Texas Supreme Court. The third lawsuit is Cause No. GV001865, *In re City of Georgetown v. Cornyn,* currently pending in the 353rd District Court of Travis County, Texas.

You also inform us that the submitted information was generated directly as a result of and in conjunction with this litigation. Based upon your assertions and a careful review of the submitted information, we agree that you have shown that litigation is pending and that the submitted information relates to the pending litigation. Therefore, the city may withhold from disclosure the submitted 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).

In summary, we decline to issue a ruling regarding the information the required release of which is before a court. The city may withhold from disclosure the submitted information under section 552.103.

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,

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/er

Ref: ID# 151335

Enc: Submitted documents

c: Mr. Michael T. Sheffield
300 Sequoia Spur West
Georgetown, Texas 78628
(w/o enclosures)