



March 8, 2002

Ms. Sarajane Milligan
Assistant County Attorney
County of Harris
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2002-1119

Dear Ms. Milligan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159581.

The Harris County Human Resources and Risk Management Department (the "county") received a request for information relating to a claim against the county. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

We first note that some of the requested information is subject to section 552.022 of the Government Code. Section 552.022 provides that

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:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the information at issue includes a completed report. The county must release this information under section 552.022(a)(1), unless it is expressly confidential under other law. Section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. As such, this exception is not other law that makes information confidential for purposes of section 552.022. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76

(Tex. App.–Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (litigation exception does not implicate third-party rights and may be waived). We have marked the document that is subject to section 552.022. This document may not be withheld from disclosure under section 552.103.

Some of the information in this document is protected, however, by section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1)-(2). Texas driver's license and license plate numbers must be withheld from the public under section 552.130. We have marked the information that is encompassed by this exception. We note, however, that the requestor identifies himself as an attorney for the individual to whom some of the section 552.130 information pertains. If the requestor is this individual's authorized representative, the requestor has a special right of access to section 552.130 information that relates to his client or to a vehicle in which his client has an ownership interest. *See* Gov't Code § 552.023.¹ Any information to which the requestor has a right of access under section 552.023 may not be withheld from him under section 552.130.²

The document that is subject to section 552.022 also contains a county employee's home telephone number and street address. Under section 552.117(1) of the Government Code, the county must withhold the home address and home telephone number of a current or former employee of the county if the current or former employee timely requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). This information may not be withheld, however, in the case of a current or former employee who made the request for confidentiality under section

¹Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *See also* Open Records Decision No. 481 at 4 (1987) (privacy theories are not implicated when an individual asks a governmental body to provide him with information concerning himself).

²Should the county receive another request for this information from a person who would not have a right of access to it, you should resubmit this same information and request another decision.

552.024 after the request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989).

Next, we address your claim under section 552.103 with respect to the rest of the requested information. This exception provides in relevant part:

(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.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body that raises section 552.103 must provide relevant facts and documents sufficient to establish the applicability of this exception to the information at issue. The governmental body must demonstrate: (1) that litigation was pending or reasonably anticipated on the date that the governmental body received the request for information and (2) that the information in question is related to that litigation. *See 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.); *see also* Open Records Decision No. 551 at 4 (1990). Both parts of the test must be met in order for information to be excepted from disclosure under section 552.103. *Id.*

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish that litigation is reasonably anticipated, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *Id.* In Open Records Decision No. 638 (1996), this office stated that a governmental body has met its burden of showing that litigation is reasonably anticipated when the governmental body (1) has received a notice of claim letter and (2) represents that the notice is in compliance with the requirements of the Texas Tort Claims Act ("TTCA"), Civ. Prac. & Rem. Code, ch. 101, or an applicable municipal ordinance. *See* Open Records Decision No. 638 at 4 (1996).

You state that the county anticipates litigation with the requestor's client and that the requested information relates to the anticipated litigation. You also inform us that the requestor's client sent the county a claim letter that complies with the notice requirements of the TTCA. Having considered your representations, we find that you have shown that the county reasonably anticipated litigation on the date of its receipt of this request for information. We also find that the information that is not subject to section 552.022 relates to the anticipated litigation.

We note, however, that the opposing party to the anticipated litigation already has seen or had access to some of this information. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to the litigation to obtain it through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). Therefore, to the extent that the opposing party has seen or had access to information that relates to the anticipated litigation, through discovery or otherwise, there is no interest in withholding that information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). In this instance, the information in question includes correspondence between the opposing party and the county. The county may not now withhold under section 552.103 any such information that the opposing party has seen or to which he has had access. The rest of the requested information that is not subject to section 552.022 is excepted from disclosure at this time under section 552.103. The applicability of section 552.103 ends once the related litigation concludes or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, some of the information that is subject to section 552.022 of the Government Code must be withheld from public disclosure under section 552.130. However, the county may not withhold any section 552.130 information to which the requestor has a right of access under section 552.023. The document that is subject to section 552.022 also contains information that the county may be required to withhold under section 552.117 of the Government Code. Except for information that the opposing party has seen or to which he has had access, the information that is not subject to section 552.022 is excepted from disclosure at this time 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).

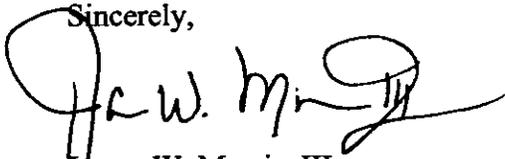
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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, appearing to read "J.W. Morris III". The signature is fluid and cursive, with a large initial "J" and "W".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 159581

Enc: Marked documents

c: Mr. Wesley H. Hocker
Hocker, Morrow & Mathews
6630 Cypresswood Drive, Suite 200
Spring, Texas 77379-7701
(w/o enclosures)