



May 31, 2002

Ms. Marva Gay  
Senior Assistant County Attorney  
Harris County  
1019 Congress, 15th Floor  
Houston, Texas 77002-1700

OR2002-2948

Dear Ms. Gay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163698.

The Office of the Harris County Tax Assessor-Collector<sup>1</sup> (the "county") received a request for the identities of individuals who reported, who were investigated for, or who had knowledge of illegal voting due to address problems for the years 1997 through 2001. You indicate that the county has released some of the responsive information. However, you contend that some of the responsive 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.

We begin by addressing your contention that the county does not have audit summaries responsive to the request for the years prior to 1999. We note that, in addition to not providing this office with information from the years 1997 and 1998, you have not provided this office with information about illegal voting from the year 1999. The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986). However, in responding to a request for information, a governmental body must make a good-faith effort to relate the request to the information that it holds or

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<sup>1</sup>You state that the Harris County Tax Assessor-Collector is also the Harris County Office of Voter Registrations.

to which it has access. See Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Therefore, to the extent the county maintains information responsive to the request for information from the years 1997 through 1999, other than audit summaries or statistical reports, we assume the county has released that information. If the county maintains other responsive information it has not released, it must release the information now. See Gov't Code §§ 552.021, .221, .301, .302.

Next, we turn to your argument under section 552.103 with respect to the information submitted to this office. Section 552.103 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.

....

(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.

The county has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a 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 county must meet both prongs of this test for information to be excepted under 552.103(a).

You indicate that the requestor has filed a lawsuit against an investigator employed by the Harris County District Attorney's Office. Furthermore, you state that the investigator is a party to the litigation as a consequence of his employment with the county. Specifically, you indicate that the requestor is suing the investigator for malicious prosecution based on the investigator's serving a criminal complaint against the requestor for illegal voting. You state that the submitted information relates to the pending litigation because the requestor is seeking the identities of individuals implicated in the same type of alleged illegal voting as had been the requestor. In support of your arguments, you have provided this office with a copy of the Plaintiff's First Amended Petition and Request for Disclosure in *Fallin v. Britt*, No. 759,493 (County Court at Law No. 2, Harris County, Texas). You have also provided us with a letter from the General Counsel for the Harris County District Attorney's Office

to the Harris County Assessor and Collector of Taxes in which the General Counsel indicates that the instant request for information relates to the pending lawsuit against the county investigator, and therefore, the requested information should be excepted from disclosure under section 552.103. Based on your arguments and our review of the submitted information, we agree that the submitted information relates to pending litigation filed against a county employee as a consequence of his employment with the county. Therefore, the county may withhold the submitted information under section 552.103 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. 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).

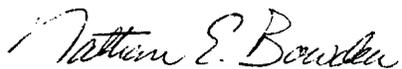
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Tex. Dep't of Pub. 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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 163698

Enc: Submitted documents

c: Mr. Jerry Fallin  
13018 Woodforest, #G  
Houston, Texas 77015  
(w/o enclosures)