



May 31, 2002

Ms. Tamara Pitts  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2002-2955

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163676.

The City of Fort Worth (the "city") received a written request for all records pertaining to a certain criminal citation for the maintenance of a substandard structure. You note that the request was served on the city's municipal court and consequently contend that some of the responsive information is not subject to the provisions of the Public Information Act. You further contend that other requested information is excepted from required public disclosure pursuant to sections 552.103, 552.107, and 552.108 of the Government Code.

You first contend that the records you submitted to this office as Exhibit D are records of the city's municipal court and thus are not subject to the Public Information Act. As a general rule, the judiciary is exempt from the provisions of the Public Information Act, *see* Gov't Code § 552.003(1)(B), but only when acting in a judicial capacity. *See Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ) (juvenile board not an extension of the judiciary); *see also* Open Records Decision No. 188 (1978) (applications held by a municipality for the position of municipal judge may not be withheld on the basis of the exemption for the judiciary). A municipal court clerk acts in a judicial capacity when the clerk maintains documents relevant to a criminal prosecution. Thus, in this instance, the Public Information Act neither authorizes the contents of Exhibit D to be withheld nor requires it to be disclosed. Open Records Decision No. 25 (1974). Consequently, the municipal court clerk is not required to release Exhibit D under the Public Information Act. Attorney General Opinion DM-166 (1992).

We next note that some of the remaining documents you submitted to our office as being responsive to the requests are specifically made public under section 552.022 of the Government Code, which provides in relevant part:

(a) 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:

....

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The court-filed documents you submitted to this office in Exhibits E and F are specifically made public under section 552.022(a)(17) of the Government Code. Sections 552.103, 552.107(1), and 552.108 do not constitute "other law" for purposes of section 552.022(a)(17).<sup>1</sup> Furthermore, although Rule 503 of the Texas Rules of Evidence, which protects information coming within the attorney-client privilege, constitutes "other law" for purposes of section 552.022, *see In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001), the privilege would be waived to the extent the otherwise privileged information is contained in a court filed document. *See* Tex. R. Evid. 511. Consequently, the city must release the public court documents that we have marked as being public under section 552.022(a)(17).

We now address the applicability of section 552.103 of the Government Code to the records you submitted to our office as Exhibit E. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). Additionally, the governmental body must demonstrate that the litigation was pending or reasonably anticipated as of the day it received the records request. Gov't Code § 552.103(c). In this instance you have provided this office with evidence that litigation involving the city was pending on the date it received the current records request. Furthermore, you have demonstrated that the submitted information "relates" to that litigation for purposes of section 552.103.

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<sup>1</sup>Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 549 at 6 (1990) (governmental body may waive informer's privilege), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.

We note, however, that most of the records contained in Exhibit E have been shared between the city and the opposing party in the litigation. Absent special circumstances, once information has been obtained by all parties to the litigation, no section 552.103 interest exists with respect to that information.<sup>2</sup> Open Records Decision Nos. 349 (1982), 320 (1982). We therefore conclude that the city must release all shared records to the requestor. However, the city may withhold all of the remaining documents contained in Exhibit E pursuant to section 552.103 of the Government Code.

We next address your section 552.108 claims with regard to the records you submitted as Exhibit F. Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 applies to the information. See Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

In support of your claim under section 552.108(a)(1), you inform us that Exhibit F pertains to a pending criminal prosecution in municipal court. Based on this representation and our review of the documents, we conclude that you have shown that section 552.108(a)(1) is applicable to these records. See *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Consequently, the city may withhold most of Exhibit F pursuant to section 552.108(a)(1) of the Government Code.<sup>3</sup>

Section 552.108, however, does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The city therefore must release all basic information, including a detailed description of the alleged offense. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

In summary, the Public Information Act does not govern the release of the records held by the municipal court that you submitted as Exhibit D. However, the copies of records filed with the court in Exhibits E and F must be released pursuant to section 552.022(a)(17). The records in Exhibit E may be withheld under section 552.103 except to the extent the records

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<sup>2</sup>We also note that the applicability of section 552.103 ends once the likelihood of litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

<sup>3</sup>Because we resolve this aspect of your request under section 552.108, we need not address the applicability of the other exceptions you raised.

have been provided by or to the opposing party in the litigation. The city may withhold most of the information submitted as Exhibit F, but "basic information" must be released to the requestor.

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 'D. Saldivar', with a long horizontal flourish extending to the right.

David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/RWP/sdk

Ref: ID# 163676

Enc: Submitted documents

c: Mr. Willie Fields  
3504 Montague Street  
Fort Worth, Texas 76119  
(w/o enclosures)