



September 25, 2002

Mr. Gordon Bowman
Assistant City Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2002-5414

Dear Mr. Bowman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 169569.

The County of Travis (the "county") received a request for information regarding Merlin "Spanky" Handley, the Travis County Director of Aviation Operations, the management staff of STARflight, or Travis County EMS from January 1, 2000 to July 8, 2002. The requestor subsequently clarified his request by explaining that he seeks:

1. All recordings videos, documents, (including but not limited to, letters, memos, notes, inter-office correspondence, intra-office correspondence) addressed to or from Casey Ping or Dinah Dinwiddie, from January 1, 2000 to July 8, 2002, referring to, regarding, or addressing:

Merlin "Spanky" Handley; or
Travis County Director of Aviation Operations; or
management staff of STARflight; or
management staff of Travis County EMS[.]

2. All, (sic) electronically stored notes, e-mails, correspondence, memos or letters made by Casey Ping or Dinah Dinwiddie, from January 1, 2000 to July 8, 2002, referring to, regarding, or addressing:

Merlin "Spanky" Handley; or
Travis County Director of Aviation Operations; or
management staff of STARflight; or
management staff of Travis County EMS[.]

You claim that the requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.103 of the Government Code 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 state that litigation is currently pending in the United States District Court, Western District of Texas, Austin Division, in *Merlin "Spanky" Handley v. Travis County, Texas, City of Austin, Dinah Dinwiddie, Individually, and Casey Ping, Individually*, Cause No. A01 CA 433 JN. You claim that the requested information is related to the subject matter of this litigation. You have not, however, explained what the subject matter of the pending litigation is. Therefore, you have not demonstrated, and we are unable to determine, the applicability of the requested information to the pending litigation. Accordingly, the county may not withhold the requested information under section 552.103.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You indicate that some of the submitted information consists of communications between the County Attorney's Office and Dinah Dinwiddie, Travis County's Executive Manager of Justice and Public Safety. You argue that such information is excepted from disclosure under 552.107(1). Section 552.107(1) protects information coming within the attorney-client privilege. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and the client's confidences made to the attorney. *See* Open Records Decision No. 574 (1990). Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege. Upon review of the submitted information, we conclude that some of the documents that you claim are excepted under section 552.107 come within the attorney-client privilege and are therefore excepted from disclosure under section 552.107(1). Thus, the county may withhold the documents we have marked under section 552.107(1). We note, however, that the remaining information that you seek to withhold under section 552.107 involves communications to or between individuals whom you have failed to identify, and we are unable to identify, as attorneys or employees of the county. Accordingly, we are unable to conclude that communications involving such unidentified individuals are protected by the attorney-client privilege, and thus, this information must be released.

We note that some of the submitted information may be excepted under section 552.117. Section 552.117 excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the county may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the present request for this information was received. For any employee who timely elected to keep his or her personal information confidential, the county must withhold the employee's home address and telephone number, social security number, and any information that reveals whether the employee has family members. The county may not withhold this information under section 552.117 for an employee who did not make a timely election to keep the information confidential. Further, we note that, as information protected under section 552.117 is intended to protect a person's privacy, section 552.023 of the Government Code provides the requestor a special right of access to his personal information. Thus, we have marked the information in the submitted documents that must be withheld under section 552.117 if the employee to whom it pertains timely elected to keep his or her personal information confidential pursuant to section 552.024.

To summarize, (1) we have marked the information that may be withheld under section 552.107(1); and (2) we have marked the information that must be withheld under section 552.117 if the employee to whom it pertains timely elected to keep his or her

personal information confidential pursuant to section 552.024. The remaining information must be released.

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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 169569

Enc: Submitted documents

c: Mr. Merlin "Spanky" Handley
7800 Old Manor Road
Austin, Texas 78724
(w/o enclosures)