OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 27, 2003

Mr. Bill Ainsworth
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR2003-0545

Dear Mr. Ainsworth:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175555.

The City of Corpus Christi (the "city") received a written request for fifteen categories of information pertaining to the positions of "Director of Public Information" and "Director of E-Government Services." You indicate that most of the responsive information will be released to the requestor.[1] You contend, however, that the information responsive to the request for "[a]ll documents, reports, witness or other statements, correspondence, findings, conclusions, and all documents contained in the complete file on [a city employee's] grievance filed in April, 2002" is excepted from required disclosure pursuant to section 552.103 of the Government Code.[2]

To secure the protection of section 552.103 of the Government Code, a governmental body has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) that litigation to which the government body is a party was pending or reasonably anticipated on the date of its receipt of the request for information *and* (2) that the information at issue is related to that litigation.

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[1]Because you contend that information responsive to only one of the fifteen categories is excepted from required public disclosure, we assume that the city has in fact released all of the other requested information. If it has not, it must do so at this time. *See* Gov't Code §§ 552.301, .302.

[2]You have not submitted to this office any evidence that the city's investigation of the grievance has been completed. *See* Gov't Code § 552.022(a)(1) (making public "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108" unless such information is expressly confidential under other law).

University of Tex. Law Sch. v. Texas Legal Found., 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991).

You explain that the city employee has filed a civil rights complaint with the Texas Commission on Human Rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5. You have provided this office with a copy of that complaint, which was filed prior to the city's receipt of the current records request. The filing of such a complaint constitutes evidence that the likelihood of litigation against the city by the complainant/employee is more than mere conjecture. *Cf.* Open Records Decision No. 386 (1983) (complaints filed with Equal Employment Opportunity Commission). We therefore conclude that the city reasonably anticipated litigation regarding the subject matter of the submitted information on the date it received the records request. We also conclude that the submitted records on their face demonstrate how they relate to the anticipated litigation for purposes of section 552.103. We therefore conclude that the city may withhold the information at issue pursuant to section 552.103 of the Government Code, with the following caveats.

We note that this office has previously concluded that, absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103 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); *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,

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/RWP/lmt

Ref: ID# 175555

Enc: Submitted documents

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(w/o enclosures)