



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

April 10, 2003

Ms. April M. Virnig  
Taylor Olson Adkins Sralla Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2003-2421

Dear Ms. Virnig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179177.

The City of Haltom City (the "city"), which you represent, received a request for 1) Judge Jack Byno's personnel records; 2) any correspondence directed to or from council members in the past 12 months that makes reference to the city jail or its operations or its personnel; 3) a list of the past 12 months of amounts spent by the city on providing counsel to indigent clients; 4) any city staff or city council-generated documents in the past 12 months that make reference to municipal court; 5) any correspondence to city council or city staff members that makes reference to municipal court; and 6) any city council or city staff members' correspondence to or from Judge Jack Byno in the past 12 months. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, and 552.137 of the Government Code. We assume that you have released any remaining requested information that you do not claim to be excepted from disclosure. If not, you must do so at this time. *See* Gov't Code §§ 552.021, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances). We have considered the exceptions you claim and have reviewed the submitted information.

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.

Gov't Code § 552.103(a), (c). Section 552.103 was intended to prevent the use of the Public Information Act as a method of avoiding the rules of discovery in litigation. Attorney General Opinion JM-048 at 4 (1989). The litigation exception enables a governmental body to protect its position in litigation by requiring information related to the litigation to be obtained through discovery. Open Records Decision No. 551 at 3 (1990). A governmental body that raises section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of the exception to the information that it seeks to withhold. To show that the litigation exception is applicable, the city must demonstrate that (1) litigation was pending or reasonably anticipated on the date it received the request and (2) the information at issue is related to that litigation. *See* Gov't Code § 552.103(a), (c); *see also* *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).

You advise that between August 30, 2002 and December 27, 2002, twelve lawsuits were filed against the city, alleging misconduct relating to the city's handling of female detainees in the city jail. You state that these lawsuits are currently pending. You further advise and provide documentation showing that the plaintiffs' attorneys sent a demand letter to a representative of the city in November 2002, threatening to file additional claims against the city based on its judge's and municipal court's handling of defendants. You state that the plaintiffs' attorneys did in fact subsequently file amended lawsuits that include the additional claims. It appears that copies were hand-delivered to the city's representative on January 17, 2003, the same day on which you state you received the request for information. Based on your representations and the information you provided, we find that the city has established that civil litigation was pending when it received this request for information. Further, we conclude that you have demonstrated that the submitted information relates to the pending litigation for purposes of section 552.103.

We note, however, that 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 parties in a pending lawsuit is not excepted from disclosure under section 552.103(a), and must be disclosed.<sup>1</sup> Otherwise, the

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<sup>1</sup> 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).

city may withhold the submitted information under section 552.103. As section 552.103 is dispositive, we do not address your remaining claims.

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 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,

A handwritten signature in cursive script, appearing to read "Kristen Bates".

Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/lmt

Ref: ID# 179177

Enc. Submitted documents

c: Ms. Miriam Rozen  
The Texas Lawyer  
C/O April M. Virnig  
TOASE, L.L.P.  
6000 Western Place Ste. 200  
Fort Worth, Texas 76107-4654  
(w/o enclosures)