



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 10, 2003

Mr. Jesus Rodriguez
Assistant County Attorney
County of El Paso
500 E. San Antonio, Room 503
El Paso, Texas 79901

OR2003-3970

Dear Mr. Rodriguez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182640.

The Justice of the Peace, Court 7 of El Paso County (the "court") received a request for all information related to a particular citation, warrant, and arrest. The El Paso County Sheriff's Department (the "department") subsequently received a request for the same information. You claim that all of the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

We note that the first request for information is directed to the court. Moreover, the information you provided indicates that the information responsive to this request consists of records of the court. Therefore, we must consider whether chapter 552 of the Government Code is applicable to the first request. Chapter 552 applies to information maintained by a governmental body. The definition of governmental body "does not include the judiciary." *See Gov't Code* § 552.003(1)(B). Thus, chapter 552 is not applicable to judicial records. *See also Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ); Attorney General Opinion DM-166 (1992); Open Records Decision No. 618 at 4 (1993). Thus, because this request for information is directed to the court, and the responsive information consists of court records, the court is not required to comply with this request under chapter 552 of the Government Code. *See Gov't Code* § 552.0035 (access to information

maintained by or for judiciary is governed by rules adopted by Supreme Court); Tex. R. Jud. Admin. 12 (public access to judicial records); Attorney General Opinion DM-166 at 1 (chapter 552 neither authorizes information held by judiciary to be withheld nor requires it to be disclosed). As chapter 552 is not applicable in this instance, we need not address your claim under section 552.103 in relation to this information.

We note, however, that certain judicial records may be open to the public under sources of law other than chapter 552. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992) (documents filed with a court are generally considered to be public); Attorney General Opinion DM-166 at 3 (public has general right to inspect and copy judicial records); Open Records Decision No. 618 at 4 (Texas courts have recognized common-law right of public to inspect and copy records of judiciary); Local Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order).

We now address your claim in relation to the information responsive to the request to the department. 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). A governmental body has the burden of providing relevant facts and documents to show the applicability of this exception in a particular situation. The test for establishing that section 552.103(a) applies is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body receives the request, 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 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). The department must meet both prongs of this test for information to be excepted under section 552.103(a).

To demonstrate that litigation is reasonably anticipated, a governmental body must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986). A governmental body may establish that litigation is reasonably anticipated by showing that 1) it has received a claim letter from an allegedly injured party or his attorney and 2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA"), Chapter 101 of the Texas Civil Practice and Remedies Code, or applicable municipal statute or ordinance. Open Records Decision No. 638 (1996).

You have submitted a formal notice of claim from the requestor dated March 24, 2003, which you state complies with the notice requirements of the TTCA. The notice of claim makes reference to the same citation and warrant that is the subject of this request for information. Based on our review of your arguments and the submitted information, we conclude that litigation was reasonably anticipated on the date the department received the request for information, and that the information at issue relates to the anticipated litigation for purposes of section 552.103(a). *Texas Legal Found.*, 958 S.W.2d at 483.

However, we note that if the opposing party in the anticipated litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor.¹ Open Records Decision Nos. 349 (1982), 320 (1982). Otherwise, you may withhold the information at issue from disclosure under section 552.103.

In summary, information responsive to the request to the court is not subject to disclosure under the Public Information Act, and the court is not required to comply with this request. You may withhold the information that is responsive to the request to the department under section 552.103.

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.

¹ In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 182640

Enc. Submitted documents

c: Mr. David Duran
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(w/o enclosures)