



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

July 18, 2003

Mr. Robert J. Gervais  
City Attorney  
City of Texas City  
P.O. Drawer 2608  
Texas City, Texas 77592-2608

OR2003-4998

Dear Mr. Gervais:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184507.

The City of Texas City (the "city") received a written request for certain records pertaining to a portion of Bay Street Park. You state that some of the responsive information will be released to the requestor. You contend, however, that the remaining information coming within the scope of the request is excepted from required disclosure pursuant to sections 552.103, 552.107, and 552.111 of the Government Code.

We note at the outset that the requestor has posed various questions to the city in connection with his records request. It is well established that the Public Information Act (the "Act") does not require a governmental body to prepare answers to questions or to do legal research. *See* Open Records Decision Nos. 563 at 8 (1990) (considering request for federal and state laws and regulations), 555 at 1-2 (1990) (considering request for answers to fact questions). Nor does the Act require the preparation of information in the form requested by a member of the public. Open Records Decision No. 145 (1976); *see also* Open Records Decision No. 347 (1982). The Act applies only to information already transcribed into tangible form. On the other hand, a request for information made pursuant to the Act may not be disregarded simply because a citizen does not specify the exact documents desired. It is incumbent on a governmental body to make a good faith effort to relate documents it holds to information that is being requested under the Act. *See* Open Records Decision No. 87 (1975).

Because your claim under section 552.103 of the Government Code is the most inclusive, we will address it first. Section 552.103 is sometimes referred to as the "litigation" exception, and 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.

A governmental body has the burden of providing relevant facts and documents to show that section 552.103 is applicable in a particular situation. Under section 552.103(a) and (c), the test for meeting this burden is a showing that (1) litigation involving the governmental body is pending or reasonably anticipated at the time of the records request, and (2) the information at issue is related to that litigation. *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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103.

You contend that the requested information relates to reasonably anticipated civil litigation involving the city. The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986). To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

You explain that the requested information relates to reasonably anticipated litigation involving the city because

[a named individual] has given the City verbal and written demands for compensation for the land that he claims belongs to the Trust and indicated he intends to file litigation . . . . The City also claims the land under deed and there appears to be no compromise on the issue. . . . The City intends to defend against the Trust's assertion of title. If the Trust were to prevail in asserting its claim to title, I have been authorized by the City Commission of the City of Texas City to pursue eminent domain proceedings.

Given your representations and our review of the submitted documents, we conclude from the totality of the circumstances surrounding the dispute between the city and the trust that litigation involving the city was reasonably anticipated at the time the city received the current records request and that the submitted records "relate" to that litigation for purposes of section 552.103. The city therefore may withhold the submitted records pursuant to section 552.103 of the Government Code.<sup>1</sup>

In reaching this conclusion, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; 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. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103. 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

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<sup>1</sup>Because we resolve your request under section 552.103, we need not address the applicability of the other exceptions you raised.

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,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/RWP/seg

Ref: ID# 184507

Enc: Submitted documents

c: Mr. Dick Gregg  
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(w/o enclosures)