



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 12, 2006

Mr. Richard Martin  
Strasburger & Price, L.L.P.  
For the City of Celina  
2801 Network Boulevard, Suite 600  
Frisco, Texas 75034

OR2006-14572

Dear Mr. Martin:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID#266710.

The City of Celina (the "city"), which you represent, received a request for information regarding the city's claim to the requestor's property. You state that you have provided a portion of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you contend that the request consists of factual questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, the city must make a good faith effort to relate a request to the information it holds. Open Records Decision Nos. 561 (1990), 87 (1975); *see* Gov't Code

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<sup>1</sup>We 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.

§ 552.353 (providing penalties for failure to permit access to public information). Upon review of the submitted information, we find that the city has made a good-faith effort to relate the request to responsive information that the city maintains. Accordingly, we will address your arguments against disclosure of the submitted information.

Next, we note that the submitted information contains a document filed with the court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless confidential under other law. *See* Gov't Code § 552.022(a)(17). Although you assert that this document is excepted under sections 552.103 of the Government Code, this section is a discretionary exception to disclosure that protect a governmental body's interests and may thus be waived by the governmental body. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). Therefore, section 552.103 does not constitute other law for purposes of section 552.022, and the city may not withhold the court-filed document on this ground. As you raise no further argument against disclosure of this information, the city must release the document we have marked pursuant to section 552.022(a)(17) of the Government Code.

We now turn to the submitted information that is not subject to section 552.022 of the Government Code. Section 552.103 of the Government Code provides in part:

(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 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 on the date the governmental body receives the request for information, and (2) the information at issue is related to that litigation. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *Univ. of Tex. Law Sch. v.*

*Tex. 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 governmental body must meet both prongs of this test for information to be excepted under section 552.103(a) of the Government Code.

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish that litigation is reasonably anticipated, a governmental body must provide this office with “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *Id.* When the governmental body is the prospective plaintiff in the anticipated litigation, the concrete evidence must at least reflect that litigation involving a specific matter is “realistically contemplated.” *See* Open Records Decision No. 518 at 5 (1989); *see also* Attorney General Opinion MW-575 (1982) (investigatory file may be withheld if governmental body’s attorney determines that it should be withheld pursuant to predecessor to section 552.103 and that litigation is “reasonably likely to result”).

You state, and provide documentation showing, that the remaining information relates to a pending lawsuit between the city and the requestor. You have submitted a copy of the complaint filed in the 362<sup>nd</sup> District Court styled *City of Celina v. City of Pilot Point v. Talley Ranch Management LTD., a Texas limited partnership*, Civil Action No. 2006-40184-362, showing this case was filed prior to the date the city received the request for information. You further inform us, and provide documentation showing, that the city filed with the Texas Commission on Environmental Quality a protest to requestor’s “Petition for Creation of Talley Ranch Water Control and Improvement District No. 1.” *See* Open Records Decision No. 588 (1991) (contested case under Administrative Procedure Act constitutes litigation for purposes of statutory predecessor to section 552.103). As such, we conclude that litigation was pending on the date the city received the request for information. We also find that the remaining information relates to the pending litigation. Therefore, the city has demonstrated the applicability of section 552.103 of the Government Code to this information. Accordingly, the city may generally withhold this information under section 552.103 of the Government Code.

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). It appears that the requestor may have previously had access to the remaining submitted information. If the requestor has previously had access to this information it may not now be withheld under section 552.103 of the Government Code. 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).

In summary, the city must release the court-filed document we have marked pursuant to section 552.022(a)(17) of the Government Code. To the extent that the remaining information has not been provided to the requestor or his representative, it may be withheld under section 552.103 of the Government Code.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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 black ink, appearing to read "Holly R. Davis", written in a cursive style.

Holly R. Davis  
Assistant Attorney General  
Open Records Division

HRD/krl

Ref: ID# 266710

Enc. Submitted documents

c: Mr. Ryan Brown  
President  
Talley Land Development  
3624 Oak Lawn Avenue, # 200  
Dallas, Texas 75219  
(w/o enclosures)