



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 15, 2007

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1400 South Lamar
Dallas, Texas 75201

OR2007-01963

Dear Mr. Toscano:

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# 270502.

The City of Dallas (the "city") received a request for nine categories of information pertaining to the Wright Amendment and the Wright Amendment Reform Act. You state that some of the requested information will be released to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We begin by addressing the requestor's comments that a portion of the information at issue has previously been released. You acknowledge that "[t]he city previously released the information contained in Exhibit F[.]" You contend, however, that litigation was not

¹We 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.

pending at the time the information was released. The Act does not permit the selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If a governmental body voluntarily releases information to a member of the public, such information may not later be withheld unless its disclosure is expressly prohibited by law. *See* Gov't Code § 552.007. Although you assert that this information is protected under section 552.103 of the Government Code, this exception is discretionary and may be waived. As such, section 552.103 does not make information confidential for purposes of section 552.007. *See id.* (prohibiting selective disclosure of information that governmental body has voluntarily made available to any member of the public); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 subject to waiver); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, the information in Exhibit F may not be withheld pursuant to section 552.103. As you raise no further exceptions against the disclosure of this information, it must be released to the requestor.

We next note that the submitted information includes city council resolutions. Because laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See* Open Records Decision Nos. 551 at 2-3 (1990) (laws or ordinances are open records), 221 at 1 (1979) (“official records of the public proceedings of a governmental body are among the most open of records”). We believe that the submitted city council resolutions are analogous to ordinances. Accordingly, the submitted city council resolutions must be released.

We further note that some of the information in Exhibit E is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body,” unless the information is excepted from disclosure under section 552.108 or expressly confidential under other law. Gov't Code § 552.022(a)(1). In this instance, the submitted information includes a completed report that is subject to section 552.022(a)(1). Although you seek to withhold the information that is subject to section 552.022 under section 552.103 of the Government Code, section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (section 552.103 may be waived); Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the city may not withhold any of the information that is subject to section 552.022 under section 552.103. As you raise no further exceptions against the disclosure of this information, it must be released.

With respect to the information not subject to 552.022 we address your claim under section 552.103. Section 552.103 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 that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. 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.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

You state that litigation is pending with regard to a specific airline terminal. In Exhibit I, you have provided copies of the pleadings in the litigation at issue: (1) *Love Terminal Partners, L.P. and Virginia Aerospace, L.L.C. v. Laura Miller*, Cause No. 06-06358, 101st Judicial District Court of Dallas County, Texas; (2) *Love Terminals Partners, L.P. and Virginia Aerospace, L.L.C. v. The City of Dallas, Texas; The City of Fort Worth, Texas; American Airlines, Inc.; Southwest Airlines, Inc.; Dallas Forth Worth International Airport Board*, Civil Action No. 3:06-CV-1279-D; (3) *Love Terminal Partners, L.P. and Virginia Aerospace, L.L.C. v. The City of Dallas, Texas; Laura Miller, in her official capacity; Angela Hunt, in her official capacity; Linda Koop, in her official capacity; Pauline Medrano, in her official capacity; Ron Natinsky, in his official capacity; Ed Oakley, in his official capacity; and Steve Salazar, in his official capacity*, Cause No. 06-10182; and (4) *Love Terminal Partners, L.P. and Virginia Aerospace, L.L.C. v. The City of Dallas, Texas; Laura Miller, in her official capacity; Angela Hunt, in her official capacity; Linda Koop, in her official capacity; Pauline Medrano, in her official capacity; Ron Natinsky, in his official capacity; Ed Oakley, in his official capacity; and Steve Salazar, in his official capacity*, Cause No. 06-11650. You inform us that the information at issue relates to the pending litigation. Having considered your arguments and reviewed the information at issue, we conclude that you have demonstrated that the city was involved in pending litigation on the

date of its receipt of this request for information. Therefore, the city may withhold the remaining information under section 552.103 of the Government Code.

We note, however, that once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note that the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (1982).

In summary, pursuant to section 552.007, the city must release the information in Exhibit F as it has been previously disclosed. The city must also release the city council resolutions and the completed report in Exhibit E. The city may withhold the remaining information under section 552.103 of the Government Code. As we make this determination, we need not address your remaining arguments against disclosure.

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,



Gilbert N. Saenz
Assistant Attorney General
Open Records Division

GNS/sdk

Ref: ID# 270502

Enc. Submitted documents

c: Mr. John F. Schmidtberger
Bickel & Brewer
4800 Bank One Center
1717 Main Street
Dallas, Texas 75201
(w/o enclosures)