



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 6, 2007

Mr. Jesús Toscano, Jr.  
Administrative Assistant City Attorney  
City of Dallas  
1500 Marilla Street  
Dallas, Texas 75201

OR2007-02552

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# 272714.

The City of Dallas (the "city") received a request for all documents relating to the T.R. Hoover Community Development Corporation ("T.R. Hoover"). You state that the city will release some of the requested information, but you claim that the submitted information is excepted from disclosure under sections 552.103, 552.107, 552.111, and 552.116 of the Government Code and privileged under Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted information.

Initially, you inform us that some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2004-10724 (2004). With regard to information in the current request that is identical to the information previously requested and ruled upon by this office, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the city must continue to rely on that ruling as a previous determination and withhold or release this information in accordance with Open Records Letter

No. 2004-10724. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not subject to Open Records Letter No. 2004-10724, we will address your arguments.

You assert that the information submitted in Exhibits C and D is excepted from disclosure under section 552.116 of the Government Code. Section 552.116 provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, or a joint board operating under Section 22.074, Transportation Code, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state that the information in Exhibit C consists of information prepared or maintained by the City Auditor (the "auditor") in conducting an audit pursuant to Chapter IX, Section 3(2) of the Dallas City Charter and City Council Resolution Nos. 88-3428 and 90-4027. You further state that the information submitted in Exhibit D consists of information prepared or maintained by the auditor in conducting an audit pursuant to section 85.40 of title 24 of the Code of Federal Regulations. You explain that the auditor is appointed by the city council and is responsible for conducting audits of city contracts. You state that the information at issue consists of audit working papers of the auditor. You

further state that the final audit reports have not been completed. Based on your arguments and our review, we agree that Exhibits C and D constitute audit working papers that may be withheld under section 552.116.

You claim that the remaining information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 provides in relevant part 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.

*Id.* § 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 was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

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 original petition filed in the 191<sup>st</sup> District Court styled *T.R. Hoover Community Dev. Corp. v. City of Dallas*, Cause No. 2006-10231, showing this case was filed prior to the date the city received the request for information. 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 withhold the remaining 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). 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, to the extent the submitted information is identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2004-10724, the city may continue to rely on that prior ruling as a previous determination and withhold or release information in accordance therewith. To the extent the submitted information was not subject to Open Records Letter No. 2004-10724, the city may withhold Exhibits C and D pursuant to section 552.116 of the Government Code. The remaining information may be withheld under section 552.103 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments.

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 cursive script that reads "L. Joseph James".

L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/jb

Ref: ID# 272714

Enc. Submitted documents

c: Ms. Sherry L. Mixon  
Executive Director  
T.R. Hoover Community Development Corporation  
5106 Bexar Street  
Dallas, Texas 75215  
(w/o enclosures)