



December 2, 1999

Ms. Betty J. Marks
General Counsel
Texas Department of Housing and Community Affairs
Post Office Box 13941
Austin, Texas 78711-3941

OR99-3467

Dear Ms. Marks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129866.

The Texas Department of Housing and Community Affairs ("TDHCA") received requests for information pertaining to the Riverwoods Apartments complex in Austin, and other properties sold by the Resolution Trust Corporation and Federal Deposit Insurance Corporation in connection with TDHCA's release of such properties from land use restriction agreements. You advise that TDHCA has no information responsive to portions of the requests. You have submitted responsive information held by TDHCA but contend that it is excepted from disclosure under sections 552.103 and 552.107 of the Government Code.

Section 552.103(a) excepts from required public disclosure 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[.]

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). You have provided a copy of a petition in *James Patterson v. Daisy Stiner et al*, filed on September 17, 1999 in the Travis County District Court, 250th Judicial District, number 99 10873. This lawsuit is brought against, among others, TDCHA's executive director and director of compliance.

You have shown that the requested information relates to this pending litigation. Therefore, except as noted below, you may withhold, under section 552.103(a), the information you submitted as responsive to the requests.

In our opinion, portions of the submitted information are statutorily public under section 552.022 of the Government Code. Section 552.022 was amended by the Seventy-sixth Legislature in 1999. The amendment applies to governmental body's request for an attorney general decision under the Public Information Act made after September 1, 1999.¹ In pertinent part, section 552.022 now provides

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body.

....

(14) administrative staff manuals and instructions to staff that affect a member of the public.

In our opinion, your exhibits B and D are subject to section 552.022(a)(3), and the portion of exhibit E we have marked is subject to section 552.022(a)(14). We have no basis for concluding that this information is "expressly confidential under other law" such as to remove the information from the mandate of section 552.022 making such information public unless it is "expressly confidential under other law." Sections 552.103 and 552.107 do not make any information confidential. Therefore, exhibits B and D and the marked portion of exhibit E must be released.

Also, note that absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). To the extent the anticipated opposing parties have seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a). Similarly, section 552.103(a) does not authorize withholding materials which have already been made available to the public, e.g. by having been filed in public records. Open Records Decision No. 436 (1986). The applicability of section

¹See Act of May 25, 1999, 76th Leg., R.S., S.B. 1851, § 5.

552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982).

Since we have disposed of this request under section 552.103(a), we need not address your section 552.107 claim except to note that the information which, as we have indicated above, may not withhold under section 552.103, may not be withheld under section 552.107 either.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 129866

Encl. Submitted documents

cc: Ms. Erica C. Barnett
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(w/o enclosures)