



December 15, 1999

Mr. Mark B. Taylor
City Attorney
City of San Marcos
City Hall
630 East Hopkins
San Marcos, Texas 78666

OR99-3637

Dear Mr. Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130248.

The City of San Marcos (the "city") received a request for "documents kept by the city related to residential building inspections at 416 Faris Street conducted by the city of San Marcos over the last two years (1998 - 1999)." You have submitted responsive information to this office for review, and inform us that these records were the subject of a previous ruling issued by this office, Open Records Letter No. 99-2734 (1999), which concluded that some of the previously requested records were excepted from required public disclosure pursuant to section 552.103 of the Government Code. You indicate that there has been no change in circumstances surrounding the records at issue, and inquire whether the city may continue to withhold the requested records pursuant to section 552.103.

In Open Records Letter No. 99-2734, this office concluded that the city may withhold some of the records at issue pursuant to section 552.103, the "litigation exception," but with the following caveat:

if the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982).

After reviewing the information at issue, it is clear to this office that several of these records have been previously held by the opposing party in the litigation, either because the documents bear the opposing party's signature or because they were submitted to the city by the opposing party. These documents, and any other documents previously viewed by the opposing party, must be released to both the current and previous requestors for this information. On the other hand, given your representations, the city may withhold any remaining documents pursuant to section 552.103 in accordance with Open Records Letter No. 99-2734.

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.

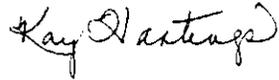
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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, 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KHH/RWP/nc

Ref: ID# 130248

Encl. Submitted documents

cc: Mr. Murlin Evans
1910 IH 35 South
San Marcos, Texas 78666
(w/o enclosures)