



February 7, 2000

Ms. Katherine Minter Cary  
Assistant Attorney General  
Public Information Coordinator  
Office of the Attorney General  
Post Office Box 12548  
Austin, Texas 78711-2548

OR2000-0444

Dear Ms. Cary:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 131895.

The Office of the Attorney General (the "OAG") received a written request for all records pertaining to a Civil Investigative Demand ("CID") that the OAG issued to the requestor's client, National Scouting Report, Inc. ("National Scouting"). Specifically, the requestor seeks 1) all correspondence from the OAG to National Scouting, 2) the OAG file regarding this matter, including complaints, and 3) all items that National Scouting submitted to the OAG in response to the CID. You contend that the requested information is excepted from required public disclosure pursuant to, *inter alia*, sections 552.101 and 552.103 of the Government Code.<sup>1</sup>

Because section 552.103 is the more inclusive exception, we will address it first. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated at the time the request for the information is received, and (2) the information at issue is related to that litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997), *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). After reviewing the facts as you have presented them to this office and the documents at issue, we conclude that the likelihood of litigation regarding the subject matter of the CID is more than mere conjecture and the records at issue "relate" to that litigation for purposes of section 552.103.

We note, however, that absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest

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<sup>1</sup>Because we resolve your request under sections 552.101 and 552.103, we need not address your other arguments for non-disclosure.

exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982).<sup>2</sup> Because representatives of National Scout have had prior access to the CID itself (Exhibit 3), as well as to the documents submitted to the OAG in response to the CID (Exhibit 4), there would be no justification for now withholding that information from the requestor pursuant to section 552.103. Consequently, the OAG may withhold only those documents submitted as Exhibits 2 and 5 pursuant to section 552.103 of the Government Code.

You contend that Exhibits 3 and 4 are made confidential under section 17.61(f) of the Business and Commerce Code, and thus must be withheld from the public pursuant to section 552.101 of the Government Code. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) Section 17.61(f) governs the release of CID materials and provides in pertinent part as follows:

(f) No documentary material produced pursuant to a demand under this section, unless otherwise ordered by a court for good cause shown, shall be produced for inspection or copying by, nor shall its contents be disclosed to any person other than the authorized employee of the consumer protection division without the consent of the persons who produced the material. The consumer protection division shall prescribe reasonable terms and conditions allowing the documentary material to be available for inspection and copying by the person who produced the material *or any duly authorized representative of that person*. [Emphasis added.]

This provision requires the OAG to withhold from required *public* disclosure all documentary material the consumer protection division obtained pursuant to the CID. In this instance, however, the requestor is acting as the attorney for National Scouting. Consequently, section 17.61(f) confers a special right of access to the requestor for all materials supplied to the OAG by National Scouting. *See also* Gov't Code § 552.023. Further, section 17.61(f) does not address, and therefore does not make confidential, the CID issued to National Scouting. Accordingly, we conclude that the OAG must release both Exhibits 3 and 4 to the requestor at this time.

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.

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<sup>2</sup>We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

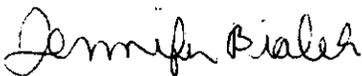
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/RWP/ch

Ref: ID# 131895

cc: Ms. Shirley Sutherland  
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(w/o enclosures)