



March 15, 2000

Mr. Bernardo J. Garcia  
Sr. Assistant County Attorney  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2000-1025

Dear Mr. Garcia:

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# 133086.

The Harris County Sheriff's Department (the "department") received a request for "any and all findings" that were submitted to the department by a named individual in April 1998. You state that the only information responsive to this request consists of the documents submitted to this office as Exhibit B. You claim that the information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. However, sections 552.301 and 552.302 of the Government Code require a governmental body to release requested information or to request a decision from the Attorney General *and state the exceptions that apply* within 10 business days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to raise an exception in a timely manner, this office will not consider that exception when making a ruling. *See* Open Records Decision Nos. 630 at 7 (1994), 515 (1988). In your initial request for an opinion, you assert that the documents should be excepted from disclosure under section 552.103 only. You raise section 552.108 in your subsequent "Memorandum Brief," submitted to this office *after* the ten business day statutory deadline for raising exceptions. Therefore, we will not consider your arguments raised under section 552.108.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal*

*Found.*, 958 S.W.2d 479 (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). Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the city must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You have submitted information showing that the regional attorney for United States Equal Employment Opportunity Commission ("EEOC") is currently considering further action on a claim related to the submitted information and involving the Harris County Sheriff's Department. This office has stated that a pending EEOC complaint indicates that litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). Therefore, we conclude that the requested information is related to reasonably anticipated litigation for purposes of section 552.103(a) and may be withheld.

However, 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). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. We also note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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).

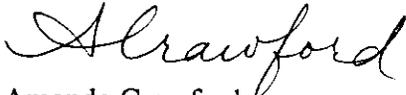
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

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,



Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/nc

Ref: ID# 133086

Encl. Submitted documents

cc: Detective Godfrey Eta  
2106 Laurel Oaks Drive  
Houston, Texas 77014-3604  
(w/o enclosures)