



April 7, 2000

Ms. Bonnie Lee Goldstein
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P.
1717 Main Street
Dallas, Texas 75201-4335

OR2000-1361

Dear Ms. Goldstein:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133982.

The City of McKinney (the "city"), which you represent, received a request for eight categories of information related to a dispute between the Town of Fairview and the city regarding the McKinney Airport. You have released information responsive to the first seven categories but claim that the requested information related to the eighth category is exempt from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample of information.¹

The information you seek to withhold pertains to the relationship between the city and McKinney Airport Partners. You explain that the documents responsive to the present request is the subject of ongoing litigation and exempt from disclosure pursuant to section 552.103 in that, though the Federal Aviation Administration (the "FAA") has issued a final ruling, that ruling is under appeal. Further, you state this office has previously considered the information subject to the present request and concluded you could withhold the information pursuant to section 552.103. *See* OR99-0781 and OR98-2589. However, we are unable to conclude from the content of those rulings that the information presently requested was under consideration in either previous ruling.

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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. To show that section 552.103 is applicable, the governmental body must demonstrate that: 1) litigation is pending or reasonably anticipated at the time of the request, 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, 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). Section 552.103 requires concrete evidence that litigation may ensue.

You report that the FAA action pending when last we considered your requests is now the subject of an appeal. Further, our review of the representative information indicates the information is the subject of the matter under appeal. We conclude that litigation is pending and that the document submitted are related to the litigation for purposes of section 552.103. Thus, the city may withhold the requested information from public disclosure under section 552.103.

Generally, 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 during the anticipated litigation is not excepted from disclosure under section 552.103(a), and 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).

We note that our previous determination, contained in Open Records Letter No. 98-2589 (1988), indicated the presence of information governed by section 552.022. Specifically, the documents annotated "release 552.022," constitute "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body." Gov't Code § 552.022(a)(3). Information enumerated under section 552.022 is public information and not excepted from required disclosure under chapter 552 of the Public Information Act unless it is expressly confidential under other law." Gov't Code § 552.022(a). You raise section 552.103 of the Government Code. Section 552.103 is an exception under the Public Information Act and is not other law that makes the requested information confidential. Accordingly, pursuant to subsections 552.022(a)(3), the marked information is public, and the city must release that information.

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,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/CHS/ljp

Ref: ID# 133982

Encl. Submitted documents

cc: Mr. Jay Y. Crum
903 South Parker Street
McKinney, Texas 75069
(w/o enclosures)