



April 25, 2000

Ms. Ann Dillon
General Counsel
General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR2000-1610

Dear Ms. Dillon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135486.

The General Services Commission (the "commission") received a written request for

time tickets, correspondence, invoicing, billing, and all other documentation pertaining to service, installation and/or repair on the Garage E parking garage elevators located at 1604 Lavaca, Austin, Travis County, Texas by Larry Evans Elevator Service, Inc. d/b/a E.M.R. Elevator Maintenance & Repair, Inc's employees, contractors and/or representatives . . . for the time period 1/1/96 through 1/1/2000.

You contend that the requested information, which you have submitted to this office as Attachment B,¹ is excepted from disclosure under section 552.103 of the Government Code.

The test for establishing that section 552.103(a), the "litigation exception," applies to requested information 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 pleadings in the lawsuit filed against the commission and the documents at issue, we conclude that you have met your burden of establishing that litigation regarding these matters was pending on the

¹We assume the documents you submitted to us as Attachment A have previously been released in response to a previous information request.

date the commission received the public information request and that the records at issue “relate” to that litigation for purposes of section 552.103.

This does not, however, end our discussion as to whether the commission may withhold all of the records at issue. Please note that section 552.022(a) of the Government Code provides in pertinent part:

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:

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- (3) 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) (emphasis added). Among the documents sought by the requestor are the commission’s billing and invoicing records pertaining to the installation, service, and repair of the elevator in question. All such documentation is deemed to be public under section 552.022(a)(3) and accordingly must be released to the requestor. We have marked with a green flag one such document that must be released.² The commission may withhold all remaining documents at this time pursuant to section 552.103 of the Government Code.

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).

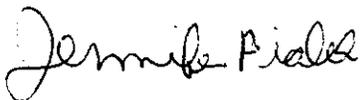
²Because this is the only document you have submitted to us that is made public under section 552.022(a)(3), we assume the commission has released all other such documents to the requestor. If it has not, it must do so at this time.

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/ljp

Ref: ID# 135486

Encl. Submitted documents

cc: Mr. Todd J. Knop
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(w/o enclosures)