



May 26, 2000

Ms. Bonnie Lee Goldstein  
Bickerstaff, Heath, Smiley, Pollan,  
Kever & McDaniel, L.L.P  
1700 Frost Bank Plaza  
816 Congress Avenue  
Austin, Texas 78701-2443

OR2000-2096

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# 136290.

The City of Highland Village (the "city"), which you represent, received a request for six items of information relating to an incident involving sewer backups. You assert that you could only find documents responsive to items 2 and 6. You state that the receipts and invoices submitted by the claimant for labor and /or services for repairs to the property due to sewer backup will be released to the requestor. You claim that the remaining responsive information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You initially argue that you need not answer factual questions posed by the requestor. We agree that to the extent that the requestor is seeking answers to factual questions, the city need not respond. Open Records Decision Nos. 555 (1990), 379 (1983), 347 (1982). However, the city must make a good faith effort to relate the request to information the city holds. Open Records Decision No. 561 at 8 (1990). If the city holds information from which the requested information can be obtained, the city must provide that information to the requestor unless it is otherwise excepted from disclosure. We believe that the city has made a good faith effort to provide information responsive to the request.

Next, you assert that there are no documents responsive to items 1, 3, 4, and 5. The Public Information Act (the "Act") does not require a governmental body to prepare new information in response to open records requests. Open Records Decisions Nos. 452 (1986), 342 (1982). Furthermore, the Act does not ordinarily require a governmental body to obtain new information to comply with a request. Open Records Decision No. 561 (1990). The Act only applies to information already in existence. In this instance it appears that the city does not have the information responsive to items 1, 3, 4, and 5 of the request. Thus, the city need not create any new documents to respond to the open records request. You have submitted

the responsive information you seek to withhold. We will, therefore, consider your arguments against disclosure for this information.

You contend that the submitted documents relate to the specific incidents of sewer backups and are excepted from public disclosure pursuant to section 552.103. 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). A governmental body may establish that litigation is reasonably anticipated by showing that 1) it has received a claim letter from an allegedly injured party or his attorney and 2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") or applicable municipal statute or ordinance. Open Records Decision No. 638 (1996).

You have submitted a formal notice of subrogation interest and demand that you state complies with the notice requirements of the TTCA and alleges that the city is responsible for the loss and demands damages. We conclude that litigation is reasonably anticipated. We find that the documents submitted by city are related to the reasonably anticipated litigation for purposes of section 552.103. Thus, you may withhold the requested information from public disclosure pursuant to section 552.103 of the Government Code.

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 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.

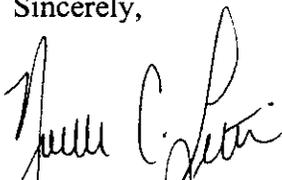
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge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



Noelle C. Letteri  
Assistant Attorney General  
Open Records Division

ncl/nc

Ref: ID# 136290

Encl. Submitted documents

cc: Mr. Scott Mendenhall  
State Farm Insurance  
P.O. Box 154409  
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(w/o enclosures)