



June 21, 2000

Bradford E. Bullock
Assistant City Attorney
City Of San Antonio
401 South Frio
San Antonio, Texas 78207

Dear Mr. Bullock:

Enclosed please find a corrected copy of ID# 136273 (OR2000-2346). The original document sent to you inadvertently was a misprint. We apologize for any inconvenience this oversight may have caused.

Sincerely,

Precilla Rodriguez
Secretary to:
Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 136273

cc: Mr. Ronald Rohde
President
Alamo Kampgrounds, Inc.
602 Gemblar
San Antonio, Texas 78219
(w/enclosure)



June 20, 2000

Mr. Bradford E. Bullock
Assistant City Attorney
City of San Antonio
401 South Frio
San Antonio, Texas 78207

OR2000-2346

Dear Mr. Bullock:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136273.

The City of San Antonio (the "city") received three requests for information, including several environmental and engineering reports, regarding a 14-acre tract on the northwest side of Gembler Road at Salado Creek. You state in a March 31, 2000, letter to the requestor, while denying that you have documents responsive to several items of the request, that the city "asserts all applicable exceptions to disclosure and denies the request for records" as to "Environmental Reports," "Written permission to enter the property," "project plans to remove fill," "drainage pattern report," "Mitigation Plan report to FEMA," "Report to EPA," and "Any and all records, photographs and Reports pertaining to the property in question." You assert that the requested 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.¹

Section 552.103 provides in pertinent part:

(a) Information is excepted from the requirements of [public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the

¹We 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). We do not address any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *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). The city must meet both prongs of this test for information to be excepted under section 552.103(a). You have demonstrated that the city filed suit against Alamo Kampgrounds, Inc., as a result of alleged illegal dumping of fill materials on the tract in question. On reviewing the submitted documents, we find that they relate to the pending litigation.

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 litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. The temporary dedication of an easement signed by the president of Alamo Kampgrounds may not be withheld under section 552.103, so must be released.

In addition, section 552.103 does not protect from required disclosure information which is specifically made public by section 552.022 of the Government Code. You submitted several documents which appear to be completed reports prepared by private engineering firms. Section 552.022 sets forth the categories of public information and provides in pertinent part that:

(a) 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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108 [.]

Section 552.103 is a discretionary exception and is not “other law” for the purposes of section 552.022(a).² We conclude that the completed engineering reports are “completed reports” for the purposes of section 552.022 and, therefore, must be released as public information.

The city may withhold the submitted information under section 552.103, except that the city must release completed reports and any information to which the opposing party in the pending litigation has had access. However, we note that the applicability of section 552.103(a) ends once the litigation has been 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

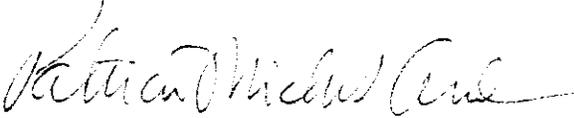
²Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 549 at 6 (1990) (governmental body may waive informer’s privilege), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions therefore do not constitute “other law” that makes information confidential.

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,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 136273

Encl. Submitted documents

cc: Mr. Ronald Rohde
President
Alamo Kampgrounds, Inc.
602 Gembler
San Antonio, Texas 78219
(w/o enclosures)