



June 22, 2000

Mr. John Steiner  
Division Chief  
City of Austin  
P.O. Box 1546  
Austin, Texas 78767-1546

OR2000-2399

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136813.

The City of Austin (the "city") received a request for 1) any contract between the city and a named company or any other person pertaining to Waller Creek Flood Management and Water Quality Improvements, 2) any correspondence between the city and the named company regarding the Waller Creek project, 3) all communications between a named company and the Watershed Protection Department personnel regarding Waller Creek tunnel, 4) all communications between the members of the Watershed Protection Department, the City Council and the City's legal department regarding the Waller Creek project, and 5) any documents pertaining to the procedure determining the size of the bond issue for the Waller Creek project. You state that you have made some of the requested information available to the requestor. You assert that the information contained in Attachment 3 is excepted from disclosure under sections 552.103 and the information contained in Attachment 4 is excepted from disclosure under 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that the information contained in Attachment 3 relates to a potential claim by the city against a named company. You assert that Attachment 3 is excepted from public disclosure under 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) applies. To show that section 552.103 is applicable, the department must demonstrate 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. 588 (1991).

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). The mere contemplation of future litigation by a governmental body is not sufficient to invoke section 552.103. *See* Open Records Decision No. 557 at 6 (1990). After reviewing the information contained in Attachment 3, we conclude that the city has only investigated the possibility of litigation with the named company. We conclude, that from the face of the documents in Attachment 3, the city is still working with the named company to resolve the conflict between the two entities. Therefore, we find that the city is merely contemplating future litigation. Consequently, we conclude that the mere contemplation of future litigation does not invoke section 552.103. *See id.* Therefore, section 552.103 is inapplicable and the city must release the documents in Attachment 3.

Next, you assert that the documents contained in Attachment 4 are excepted from disclosure under section 552.107. Section 552.107(1) excepts information from disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Code § 552.107(1). In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only “privileged information” that is, information that reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. *Id.* at 5. Section 552.107(1) does not protect purely factual information. *Id.* Moreover, in Open Records Decision No. 589 (1991), the attorney general determined that the “attorney-client privilege” exception did not protect a requested list of “phone calls and conferences regarding a particular matter” or indications that an attorney had reviewed documents relevant to the attorney’s representation of the government body. After reviewing the documents in Attachment 4, we find that some of the information reveals either confidential communications from the client to the attorney or the attorney’s legal advice or opinions. We have marked the information that the city may withhold pursuant to section 552.107(1). The city must release the remaining information to the requestor.

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.

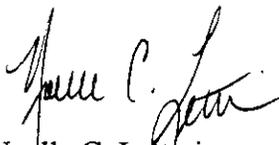
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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# 136813

Encl. Submitted documents

cc: Mr. Walter H. Mizell  
Brown, McCarroll & Oaks Hartline, L.L.P.  
111 Congress Avenue, Suite 1400  
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(w/o enclosures)