



July 6, 2000

Mr. Edward H. Perry
Assistant City Attorney
City of Dallas
1500 Marilla, 70 North
Dallas, Texas 75201

OR2000-2524

Dear Mr. Perry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136963 and ID# 137235. We have combined your two requests and address them both in this ruling.

The City of Dallas (the "city") received two written requests for records pertaining to the lease of certain facilities at Dallas Love Field. You state that the city has released some responsive information to the requestors. You contend, however, that certain other documents are excepted from disclosure pursuant to sections 552.101, 552.103, 552.105, 552.107(1), and 552.111 of the Government Code.¹ You have submitted to this office a representative sample of the types of records you seek to withhold.²

Section 552.107(1) of the Government Code excepts from required public disclosure information coming within the protection of the attorney-client privilege. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and client confidences. *See* Open Records Decision No. 574 (1990).

¹With regard to the records request dated April 24, 2000, you state that the documents you seek to withhold are responsive to request items 1 - 4. With regard to the records request dated April 28, 2000, you state that the documents you seek to withhold are responsive to request items 1, 4, 5, 6, 7, and 8. Because you do not raise any exceptions to disclosure for the information responsive to request items 5 - 7 in the April 24 request, or for the information responsive to request items 2 and 3 in the April 28 request, we assume the city has released all such information to the respective requestors. If it has not, it must do so at this time.

²In 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 No. 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.

Most of the information at issue consists of communications between the city attorney's office and various city staff, including city council members. After reviewing the information at issue, we agree that most of the information you submitted to this office consists of either an attorney's legal advice or confidential client confidences that come within the attorney-client privilege. Accordingly, the city may withhold those records pursuant to section 552.107(1) of the Government Code. However, some of the documents before us do not contain privileged attorney-client communications. We must address, therefore, whether these documents are excepted by one of the other exceptions you raise.

To secure the protection of section 552.103(a) of the Government Code, a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991). The governmental body must also demonstrate that the litigation was pending or reasonably anticipated as of the date of receipt of the records request. Gov't Code § 552.103(c). You have provided this office with several additional documents, including pleadings from civil lawsuits and administrative proceedings before the United States Department of Transportation that demonstrate that litigation was pending on the date the city received both records requests. Further, after examining the records not protected by section 552.107(1), we conclude that these documents "relate" to the pending litigation for purposes of section 552.103. Accordingly, the city may withhold these documents, which we have marked with blue flags, pursuant to section 552.103 of the Government Code.

Because we resolve your request under sections 552.103 and 552.107(1), we need not address the city's other claimed exceptions. 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).

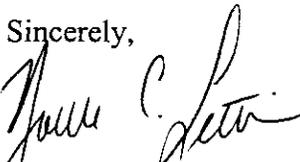
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

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/RWP/ljp

Ref: ID# 136963

Encl. Submitted documents

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