



July 24, 2000

Mr. Greg S. Boling
Bickerstaff, Heath, Smiley, Pollan, Keever & McDaniel, L.L.P.
1717 Main Street, Suite 3000
Dallas, Texas 75201-4335

OR2000-2783

Dear Mr. Boling:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139000.

The City of McKinney (the "city"), which you represent, received a request in the form of six questions regarding a sewer backup at a specified residence. The city received the following questions:

1. Was the city working on the line when the damage occurred, or did the city respond to a call about a backed up sewer?
2. What equipment was used to clear the line?
3. How many backups have occurred on this line in the previous year?
4. Was the sewage forced into the home by the activities of the city?
5. Were any street/sewer repairs in progress within approximately 1000 yards of our insured's residence on the date of loss?
6. Who called in the request for service to the city?

The requestor also states that the request is in the form of questions in order for the city to locate the documents that the requestor wants.¹ You assert that there are no documents responsive to question numbers 1, 3, 4, 5, and 6 and that you will release receipts and invoices submitted by the residents.² You claim that the submitted 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.

Section 552.103(a), amended by the Seventy-sixth Legislature, reads as follows:

(a) Information is excepted from [required 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 state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). Further, litigation must be pending or reasonably anticipated on the date the requestor applies to the public information officer for access. Gov't Code § 552.103(c).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). In Open Records Decision No. 638 at 5 (1996), this office determined that a governmental body establishes that litigation is reasonably anticipated when it receives a notice of claim from an attorney and represents to this office that the notice complies with the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code, or any applicable city statutes or ordinances.

¹The Public Information Act does not require governmental bodies to provide answers to general inquiries. Open Records Decision Nos. 555 (1990), 342 (1982). It simply requires, with certain exceptions, that governmental bodies make available information they collect, assemble, or maintain. Although the city has not answered the questions, the city has submitted information related to the sewer backup. Therefore, we will address the city's asserted exception to disclosure of the submitted information.

²The city is under no obligation to obtain or prepare new information in response to the request. See Gov't Code §§ 552.002, 552.021, 552.227, 552.351; Open Records Decision No. 572 (1990). However, the city must make a good faith effort to relate the request to information which it holds. Open Records Decision No. 561 at 8 (1990).

You represent that a notice of claim submitted by the residents complies with the notice provisions of the Texas Tort Claims Act. Therefore, we conclude that the city has made the requisite showing that the submitted information relates to reasonably anticipated litigation for purposes of section 552.103(a). Therefore, you may withhold the submitted information under section 552.103(a).

We note that if the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. 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,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/ljp

Ref: ID# 139000

Encl. Submitted documents

cc: Mr. Scott Mendenhall
Claim Specialist
State Farm Insurance
P.O. Box 154409
Irving, Texas 75015
(w/o enclosures)