



August 17, 2000

Ms. Carolyn Jones  
Town Secretary  
Town of Fairview  
500 South Highway 5  
Fairview, Texas 75070-0517

OR2000-3150

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 138097.

The Town of Fairview (the "town") received a request for "copies of the graphics (i.e. maps, drawings, hi-lited abstract copy, etc.) that represent all twenty-five (25) annexation notices published in the McKinney Courier Gazette on May 22, 2000 for June 1 and June 2 Public Hearings." You have submitted for our review information that is responsive to the request, consisting of annexation petitions, a voluntary annexation agreement, notices of public hearings with attached written property descriptions, and copies of plat record maps that indicate the boundaries of the properties described in the annexation petitions. You claim that this information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you assert and reviewed the submitted information.

Section 552.103 of the Government Code, the "litigation exception," states in relevant part:

(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.

Gov't Code § 552.103(a). 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 the litigation exception, applies to requested information is a two-prong showing that (1) the governmental body is a party to pending or reasonably anticipated litigation, and (2) the information at issue is related to that litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997), *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Additionally, the governmental body must demonstrate that the litigation was pending or reasonably anticipated at the time the request for the information was received. Gov't Code § 552.103(c). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

In support of the applicability of section 552.103 to the information at issue, you direct our attention to a 1998 ruling of this office which concluded that litigation relating to the expansion of the McKinney Municipal Airport was reasonably anticipated. *See* Open Records Letter No. 98-2589 (1998). As to the circumstances since our issuance of this decision, you state only that "the likelihood of litigation between McKinney and [the town] respecting the McKinney Airport expansion is even greater today than it was on November 4, 1998." This assertion alone, however, does not demonstrate that litigation in which the town would be a party is reasonably anticipated in this instance. Nor have you provided evidence to this office that the town anticipates becoming a defendant in any related legal action. We conclude, therefore, that the town may not withhold any of the information at issue pursuant to section 552.103.

In summary, you may not rely upon Open Records Letter No. 98-2589 (1998) as a basis for exempting from public disclosure the information responsive to the current request. The requested information must be released 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.

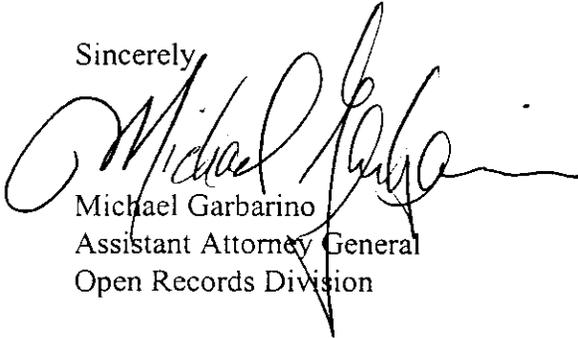
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge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



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/pr

Ref: ID# 138097

Encl. Submitted documents

cc: Ms. Beverly Covington  
City Of McKinney  
P O Box 517  
McKinney, Texas 75070-0517  
(w/o enclosures)