



August 31, 2000

Mr. Edward H. Perry
Assistant City Attorney
Office of City Attorney
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR2000-3388

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# 138585.

The City of Dallas (the "city") received a request for all public information in the possession of Councilmember Alan Walne, any employee or representative of the City of Dallas, Alan Blaydes and any other member of the City of Dallas Planning Commission for District 10, related in any way to any complaint, allegation, grievance, or issue about the location, operation, management, students, administration, charter provisions, and financial performance of the Heritage Academy Charter School. You state most of the information requested will be made available to the requestor. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code.¹ We have considered the exceptions you claim and

¹We note that in your initial request to this office, dated June 29, 2000, you raised section 552.105 to except the requested information from public disclosure. However, in your subsequent request, dated July 7, 2000, you did not brief this exception. Consequently, you have waived this exception. Gov't Code § 552.301

reviewed the representative samples of submitted information, Exhibits B and C.²

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 city 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). You state that Exhibits B and C are excepted from public disclosure under section 552.103. You state that the communications in Exhibit B clearly reference the possibility of legal action being taken against the City or action by the City to enforce code requirements. After reviewing Exhibit B, we find that the city has not furnished concrete evidence that litigation is realistically contemplated. Therefore, we find that section 552.103 is inapplicable to Exhibits B and C. Consequently, as the city did not argue that any other exceptions apply to Exhibit C, the city must release Exhibit C in its entirety.

You also claim that Exhibit B is excepted from public disclosure under sections 552.101 and 552.107. Although the city claims that section 552.101 excepts information protected by the attorney client privilege, this office has concluded that the attorney client privilege is more properly raised under section 552.107. *See* Open Records Decision No. 574 (1990). We will now consider whether section 552.107 of the Government Code applies to Exhibit B.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) 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

²We 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). Here, 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.

a governmental body's attorney. *Id* at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107(1) protects them only to the extent that such communications reveal the attorney's legal advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* After reviewing Exhibit B we conclude that Exhibit B contains documents that reflect an attorney's legal advice or opinions. Therefore, we find that the city may withhold Exhibit B in its entirety under section 552.107(1) of the Government Code. Because we are able to make a determination regarding Exhibit B under section 552.107(1), we need not discuss your section 552.111 claim to except these documents from public disclosure.

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.

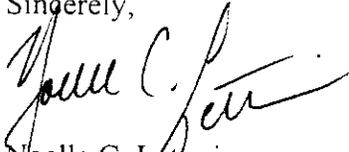
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge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

A handwritten signature in black ink, appearing to read "Noelle C. Letteri". The signature is fluid and cursive, with the first name "Noelle" being the most prominent part.

Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/pr

Ref: ID# 138585

Encl. Submitted documents

cc: Kelly Evans
Law Offices of Kelly Randolph Evans
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(w/o enclosures)