



October 13, 2000

Ms. Elaine S. Hengen  
Assistant City Attorney  
Office of the City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2000-3977

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 140149.

The City of El Paso Police Department (the "city") received three requests for information concerning a sexual assault and a suicide. The first request seeks copies of all open records requests made by members of the media and other people for information concerning the sexual assault and suicide. The second request is for copies of any and all records concerning the subject incidents generated after May 10, 2000. Request number three is for the suicide victim's cellular phone records and any and all records regarding a suicide outcry that he allegedly made. The city states that the suicide victim, a detective with the police department, was not assigned a cellular phone during the time period requested. As such, the city has no such records. You state that you have released some administrative records, and claim that the remaining information, submitted as Exhibits I, J, and K, is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the documents submitted as Exhibit J and the identity of the sexual assault victim were previously ruled upon by this office in Open Records Letter No. 2000-667 (2000). Section 552.301 of the Government Code generally requires a governmental body that receives a written request for information that it wishes to withhold from required public disclosure and that it considers to be within one of the Public Information Act's exceptions to disclosure to ask the attorney general to determine that the information at issue is excepted from disclosure. *See Gov't Code § 552.301(a)*. However, when a request involves the precise information at issue in a prior open records ruling, a governmental body need not request another decision from the attorney general under section 552.301(a). Additionally, if a governmental body releases nonconfidential information to a member of the public, then

the governmental body must release the information to all members of the public who request it. Gov't Code § 552.007. Therefore, as to the information submitted as Exhibit J and the sexual assault victim's name contained in Exhibit I, the city must rely on the decision in Open Records Letter No. 00-2667, and release the information to the requestor as directed by that ruling.

We next address your arguments under section 552.103 of the Government Code. 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) is applicable in a particular situation. In order to meet this burden, the governmental body must show 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. 551 at 4 (1990). 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). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You claim that litigation is reasonably anticipated because a claim has been filed against the city. You represent that the claim is in compliance with the notice requirements of the Texas Tort Claims Act ("TTCA"). See Open Records Decision No. 638 (1996) (fact that governmental body received claim letter that it represents to this office to be in compliance with notice requirements of TTCA or applicable municipal ordinance shows that litigation is reasonably anticipated). Further, you represent that the Notice of Claim meets the requirements of the Texas Tort Claims Act and was received by the city prior to its receipt of the request at issue. We find, therefore, that litigation is reasonably anticipated. We also believe that the requested documents are directly related to the anticipated civil litigation. Thus, with the exception of the information addressed above, you may withhold the submitted information pursuant to section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. We also note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). However, some of the requested information may be confidential by law and must not be released even after litigation has concluded. If you receive a subsequent request for the information, you should re-assert your arguments against disclosure at that time. Gov't Code § 552.352 (distribution of confidential information is criminal offense).

In summary, the city must rely on Open Records Letter No. 00-2667 as to the information it wishes to withhold in Exhibits I and J. You may withhold the remaining responsive information, Exhibit K, under section 552.103. Because section 552.103 and Open Records Letter No. 00-2667 are dispositive, we do not address your other arguments.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/er

Ref: ID# 140149

Encl: Submitted documents

cc: Ms. Louie Gilot  
El Paso Times  
P.O. Box 20  
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(w/o enclosures)