



January 8, 2001

Mr. Paul Siebenthal
Mayor
Village of Timbercreek Canyon
212 Quail Ridge Drive
Amarillo, Texas 79118

OR2001-0068

Dear Mr. Siebenthal:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142991.

The Village of Timbercreek Canyon (the "village") received a written request for various records pertaining to the village's receipt and expenditure of public funds. You contend that the requested information is excepted from disclosure under section 552.103 of the Government Code. You have submitted to this office as responsive to the request a representative sample of the records at issue.¹

We note at the outset that some of the requested information is not subject to the provisions of the Public Information Act. As a general rule, the judiciary is exempt from the Public Information Act, *see* Gov't Code § 552.003(1)(B), but only when acting in a judicial capacity. *See Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ) (juvenile board not an extension of the judiciary); *see also* Open Records Decision No. 188 (1978) (applications held by a municipality for the position of municipal judge may not be withheld

¹In 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.

on the basis of the exemption for the judiciary). A municipal court acts in its judicial capacity when it maintains documents relevant to a criminal prosecution. Thus, the Public Information Act neither authorizes the requested information held by the municipal court to be withheld nor requires it to be disclosed. Open Records Decision No. 25 (1974).

Item 7 of the request seeks "Record of marshal's activity for tickets, fines, etc. from 1/195 [sic] to present" while Item 8 of the request seeks "Record of Village Judge activity for tickets, fines, etc. from 1/1/95 to present." To the extent that these records are held exclusively by the municipal court, the village is not required to release those records under the Public Information Act. Attorney General Opinion DM-166 (1992). *But see id.* at 2-3 (public has general right to inspect and copy judicial records); Gov't Code § 27.004(a) (justice's dockets, books, and papers filed in connection with case before justice court subject to public inspection); *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (information contained in public court records not protected by common law privacy); *see also* Gov't Code § 552.022(a)(17) (discussed below).

We now address the applicability of section 552.103 of the Government Code to the remaining documents at issue. A governmental body has the burden of providing relevant facts and documents to show that section 552.103 is applicable in a particular situation. Under section 552.103(a) and (c), the test for meeting this burden is a showing that (1) litigation involving the governmental body is pending or reasonably anticipated at the time of the records request, and (2) the information at issue is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103. In this instance, you have demonstrated that litigation against the village was pending on the date the records request was received. Furthermore, after reviewing the pleadings in the litigation, we conclude that the documents at issue "relate" to the litigation for purposes of section 552.103.

This does not, however, end our discussion on the applicability of section 552.103. We note that all of the remaining documents at issue are made public by law. Item 4 of the request seeks "Village Alderman meeting agenda from 1/1/95 to present." The agendas of a governmental body's public meetings are specifically made public by statute, *see* Gov't Code § 551.043, and therefore may not be withheld from the public pursuant to section 552.103 of the Government Code. Information specifically made public by statute may not be withheld from the public by any of the Public Information Act's exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). The village therefore must release all records responsive to Item 4.

Most of the remaining information at issue is specifically made public under section 552.022(a) of the Government Code. Section 552.022(a) provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

....

(15) information regarded as open to the public under an agency's policies; [and]

....

(17) information that is also contained in a public court record.

Gov't Code § 552.022(a)(3), (15), (17) (emphasis added). Most of the documents at issue consist of information in an "account" of the village's public funds. Additionally, the information requested in Item 7 appears to consist of a record that would also be contained in a public court record. Finally, the "Application to Build" form responsive to Item 11 consists of information generally available to any member of the public.

Because section 552.103 does not make information "confidential" for purposes of the Public Information Act, *see* Open Records Decision No. 542 (1990), we conclude that, pursuant to section 552.022(a), the village must release all of the records at issue that are not subject to the judiciary exclusion under section 552.003(1)(B) of the Government Code.

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).

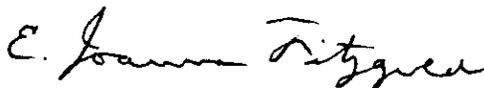
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/RWP/seg

Ref: ID# 142991

Encl. Submitted documents

cc: Mr. Mike Campbell
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