



January 16, 2001

Mr. J. David Dodd, III  
Nichols, Jackson, Dillard,  
Hager & Smith, L.L.P.  
500 North Akard, Suite 1800  
Dallas, Texas 75201

OR2001-0147

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143371.

The City of University Park (the "city"), which you represent, received the following request:

Any and all copies of document(s) or notes handwritten or otherwise including photographs in your possession about appearance related to 4080 Hanover St., Dallas, Texas 75225 and any and all documents related to Jack Kenyon, Jr. such as CITY OF UNIVERSITY PARK CITATION NUMBERS 01253 and 01254, and any documents sent by Jack Kenyon, Jr.

You state that you have given the requestor copies of all correspondence relating to his cases, copies of the citations, and a copy of the complaint. You claim that the submitted information is excepted under sections 552.101 and 552.103 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

You assert that the requested information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103(a) provides as follows:

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<sup>1</sup>We note that you assert section 552.101 in conjunction with the work product privilege. However, the exceptions that cover work product are sections 552.103 and 552.111 of the Government Code. *See* Open Records Decision No. 575 at 2 (1990) (providing that section 552.101 does not except information merely because it might be privileged from discovery).

(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).

You state that the submitted information pertains to two pending cases for code violations. Based on your representations, we agree that litigation is pending and the submitted information relates to the litigation and may be withheld under section 552.103.<sup>2</sup> We note that the submitted information contains a copy of the citations which you state have been previously released to the requestor. If you have released any of the submitted information to the requestor, you may not withhold the released information under section 552.103. *See* Open Records Decision Nos. 349 (1982) (providing that if the opposing party in the litigation has seen or had access to any of the information there is no section 552.103(a) interest in withholding that information), 320 (1982). We note that 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.

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<sup>2</sup>We note that attorney work product that relates to pending litigation is excepted under section 552.103.

*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).

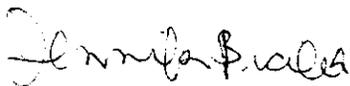
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/er

Ref.: ID# 143371

Encl.: Submitted documents

cc: Mr. Jack Kenyon, Jr.  
4080 Hanover Street  
Dallas, Texas 75225  
(w/o enclosures)