



May 24, 2001

Mr. Michael J. Cosentino
City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2001-2142

Dear Mr. Cosentino:

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# 147621.

The City of Bryan (the “city”) received a request for “all open records request [sic] filed by [the] Brazos County District Attorney’s office” and “all memos-e-mails, letters [sic] pertaining to the open records request” during a specified time interval. You have submitted representative samples of responsive information.¹ You claim that this information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.² We also received comments from the District Attorney for Brazos County. *See Gov’t Code § 552.304.*

¹This letter ruling assumes that the submitted representative samples of information are truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the city to withhold any responsive information that is substantially different from the submitted information. *See Gov’t Code § 552.301(e)(1)(D)*; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

²We note that you redacted portions of the documents at issue prior to submitting them to this office. Section 552.301 of the Government Code requires the governmental body to submit the requested information to this office in a manner that permits us to decide whether the information is excepted from disclosure. By totally obliterating portions of the submitted documents, you made it impossible for us to review those portions of the documents. You thus failed to request a decision in the manner prescribed by section 552.301. In the future, failure to comply completely with section 552.301 will result in a decision that the requested information is public and must be released in its entirety. *See Gov’t Code §§ 552.006, .301(e), .302.*

Section 552.103, the "litigation exception," provides 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.

.....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold. To sustain this burden, the governmental body must demonstrate: (1) that litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) that the information in question is related to that litigation. *See 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.); *see also* Open Records Decision No. 551 at 4 (1990). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *Id.*

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish that litigation is reasonably anticipated, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *Id.* Among other examples, this office has concluded that litigation was reasonably anticipated where the opposing party took the following objective steps toward litigation: (1) filed a complaint with the Equal Employment Opportunity Commission ("EEOC"), *see* Open Records Decision No. 336 (1982); (2) hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and (3) threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

In this instance, you assert that the request for information by the Brazos County District Attorney establishes that litigation is reasonably anticipated. You argue that the district attorney's request itself "should be excepted . . . under § 552.103, as litigation could 'reasonably be anticipated' by receipt of such an exhaustive and detailed request from the

Brazos County District Attorney.” You further contend that “under the circumstances relating to the format of the District Attorney’s request, a release of the request itself and the information it engenders would be tantamount to releasing all of that information to the general public.” We have considered your arguments. We find, however, that you have not demonstrated that the information at issue relates to litigation that the city reasonably anticipated on the date of its receipt of the request for that information. Therefore, the city may not withhold the requested information under section 552.103. *See Open Records Decision No. 328 at 2 (1982)* (emphasizing that attorney general must be presented with concrete evidence showing that the claim that litigation may ensue is more than mere conjecture).

We note, however, that the submitted documents contain motor vehicle record information that the city must withhold under section 552.130. Section 552.130 excepts from disclosure information that relates to “a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130(a)(2). The city must withhold vehicle identification numbers under section 552.130(a)(2).

In summary, the submitted information is not excepted from disclosure under section 552.103. Except for the motor vehicle record information that the city must withhold under section 552.130, the requested information must be released.

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

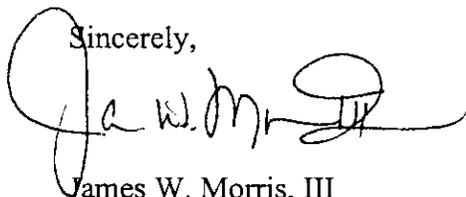
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 147621

Encl: Submitted documents

cc: Mrs. Beth Price
1312 Brook Hollow Drive
Bryan, Texas 77802
(w/o enclosures)