



June 15, 2001

Mr. J. Andrew Bench
Scott, Walker & Morgan, L.L.P.
P.O. Box 1353
Greenville, Texas 75403-1353

OR2001-2555

Dear Mr. Bench:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148485.

The City of Greenville (the "city"), which you represent, received a written request for the "amount of payment made [by the city] to Botanical Technologies" during a specified time period. You contend that the requested information is excepted from disclosure under section 552.103 of the Government Code.

Section 552.103 of the Government Code is commonly referred to as the "litigation exception." Under section 552.103(a) and (c), the governmental body raising this exception must demonstrate that (1) litigation involving the governmental body was pending or reasonably anticipated at the time of the records request, and (2) the information at issue is related to that litigation. *See also 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, however, we need not address your section 552.103 claims. Even if this office were to assume *arguendo* that you had met your burden of establishing both prongs of the section 552.103 test, we nevertheless conclude that the requested information is specifically made public under section 552.022 of the Government Code, which 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.

The information you submitted to this office as being responsive to the request clearly is contained in an "account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body." Section 552.103 of the Government Code is discretionary exception and not "other law" for purposes of section 552.022(a). *See* Open Records Decision No. 542 (1990) ("litigation exception" does not implicate third party rights and therefore is waivable by a governmental body). You do not argue, nor does this office believe, that the requested information is made confidential by a law outside the Public Information Act. We therefore conclude that the requested information is expressly made public by section 552.022(a)(3) of the Government Code and therefore must be released to the requestor in its entirety.

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,



Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/RWP/seg

Ref: ID# 148485

Enc. Submitted documents

c: GDM Construction, Inc.
1028 County Road 2062
Klondike, Texas 75448-6432
(w/o enclosures)