



July 17, 2001

Ms. Amanda Crawford  
Assistant Attorney General  
Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2001-3088

Dear Ms. Crawford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149520.

The Office of the Attorney General (the "OAG") received requests for (1) a copy of the OAG's file for any complaints or related materials concerning either Travelbridge of North Texas, L.L.P. ("Travelbridge"), or Turn of the Century Adventures, Inc. ("TOCA"), or both, and (2) the OAG's investigative file and any documents concerning TOCA. You indicate that the same information is responsive to both requests. You further indicate that you do not object to the release of some responsive information. We therefore assume you have released this information. *See* Gov't Code §§ 552.021, .301, .302. However, you also assert that some of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.110, 552.111, and 552.130 of the Government Code. Finally, you indicate that the request for information may implicate the proprietary rights of a third party, TOCA, and have thus notified TOCA of the request pursuant to section 552.305. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

We first address your argument under section 552.111 of the Government Code. Section 552.111 of the Government Code excepts from required public disclosure "[a]n interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency." You contend that the requested information is protected

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<sup>1</sup>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 Nos. 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.

by the attorney work-product privilege, as encompassed by section 552.111. In Open Records Decision No. 647 (1996), this office held that a governmental body may withhold information under section 552.111 if the governmental body is able to show (1) that the information was created for trial or in anticipation of litigation under the test articulated in *National Tank Co. v. Brotherton*, 851 S.W.2d 193 (Tex. 1993) and (2) that the information in question consists of or tends to reveal an attorney's "mental processes, conclusions, and legal theories." Open Records Decision No. 647 at 5 (1996).

The first requirement that must be met to consider information "attorney work product" is that the information must have been created for trial or in anticipation of litigation. In order for this office to conclude that information was created in anticipation of litigation, we must be satisfied that

- a) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue; and b) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation.

*See National Tank*, 851 S.W.2d at 207. A "substantial chance" of litigation does not mean a statistical probability, but rather "that litigation is more than merely an abstract possibility or unwarranted fear." *Id.* at 204. You indicate that "[a]ll of the submitted documents were collected, created, or maintained in preparation of anticipated litigation." Based on your arguments and our review of the submitted information, we agree that the submitted information was created in anticipation of litigation.

The second requirement that must be met is that the work product "consists of or tends to reveal the thought processes of an attorney in the civil litigation process." Open Records Decision No. 647 at 4 (1996). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's "entire file" was "too broad" and, citing *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993), held that "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." 873 S.W.2d at 380. Here, the requestors seek the OAG's entire files relating to investigations of Travelbridge and TOCA. Under *Curry*, we find that release of the submitted information would necessarily reveal the OAG's thought process concerning its case. Therefore, we find that the OAG may withhold exhibits 3A through 12 under section 552.111 as attorney work product. Based on this finding we need not reach your remaining 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).

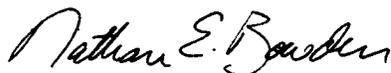
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref.: ID# 149520

Enc.: Submitted documents

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