



August 22, 2001

Ms. Tracy B. Calabrese  
Senior Assistant City Attorney  
City of Houston - Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2001-3722

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150991.

The City of Houston (the "city") received a request for information pertaining to several specified addresses in Houston. You inform us that several documents and a videotape will be made available to the requestor, but claim that the remainder of the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

First, we note that some of the submitted records fall within the scope of section 552.022 of the Government Code. Section 552.022 provides in relevant part that

*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:*

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

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

Gov't Code § 552.022(a)(1), (3)(emphasis added). The department must release any requested information that falls within subdivisions (1) or (3) of section 552.022(a), unless

that information is expressly confidential under other law or is part of a completed report, audit, evaluation, or investigation made of, for, or by a governmental body that is protected by section 552.108. *See id.* § 552.022(a)(1).

Section 552.103 of the Government Code is a discretionary exception to disclosure that protects the interests of the governmental body and may be waived. As such, section 552.103 is not "other law" that makes information expressly confidential for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475, 476 (Tex. App.--Dallas 1999, no pet.) (stating that governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (general discussion of discretionary exceptions), 542 at 4 (1990) (stating that statutory predecessor to section 552.103 does not implicate third-party interests and may be waived by governmental body). Therefore, the department may not withhold the information that falls within the scope of section 552.022 under section 552.103, and it must be released. We have marked this information with green flags.

We will next address your argument under section 552.103 for the remaining information. Section 552.103 provides as follows:

(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.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a 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, 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). The city must meet both prongs of this test for information to be excepted under 552.103(a).

You inform us that the requestor represents an individual who has brought suit against the city alleging that the city illegally ordered the destruction of the plaintiff's property as well as the removal of a vehicle from the property. In support, you have provided this office with

copies of documents filed in cause number 736724 in the County Civil Court at Law No. 1, Harris County, Texas. We therefore conclude you have met the first prong of section 552.103. Upon review of the submitted information, we conclude it is related to the pending litigation. Therefore, the submitted information not made public under section 552.022 may be withheld under section 552.103(a), with the following exceptions.

We note that the submitted documents contain information seen by the opposing party. Generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Further, we also have identified certain documents, marked with green flags, to which you have demonstrated the applicability of section 552.103, but which nevertheless are not excepted from required public disclosure. Section 552.103 does not authorize the withholding of information which has already been made available to the public. Open Records Decision No. 436 (1986). Thus, the city must release the deed records that were evidently obtained from public records.

To summarize, the city may withhold the requested information under section 552.103(a), with the exception of information coming within the ambit of sections 552.022(a)(1) and 552.022(a)(3), deed records that have been obtained from public records, and information seen by the opposing party in the litigation.

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 150991

Enc. Submitted documents

c: Mr. Robert J. Carty, Jr.  
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(w/o enclosures)