



March 5, 2002

Ms. Elizabeth Lutton
Senior Attorney
City of Arlington
P.O. Box 231
Arlington, Texas 76004-0231

OR2002-1083

Dear Ms. Lutton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159345.

The City of Arlington (the "city") received two separate requests from different requestors for notices of claims pertaining to former city police officer Joey Cushman. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that the information at issue is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with rule 408 of the Texas and Federal Rules of Evidence.¹ Rule 408 governs the *admissibility* of information developed through compromise negotiations. *See* TEX. R. EVID. 408; *see also* FED. R. EVID. 408. However, the Public Information Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. Gov't Code §§ 552.005 (chapter 552 does not affect the scope of civil discovery), .006 (chapter 552 does not authorize withholding public information or limit availability of public information to public except as expressly provided by chapter 552); Attorney General Opinion JM-1048 (1989); *see* Open Records Decision No. 575 (1990) *overruled in part by* Open Records Decision No. 647 (1996) (section 552.101 of the Act does not encompass discovery privileges). Rule 408 does not expressly make information confidential. We note that the confidentiality protected by

¹ Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes.

section 552.101 requires express language making certain information confidential or requires that information not be released to the public. *See* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987), 465 at 4-5 (1987). We will not imply a confidentiality requirement from the structure of a statute or rule. *See* Open Records Decision No. 465 at 4-5 (1987). Accordingly, we conclude that the city may not withhold from disclosure the information at issue pursuant to section 552.101 of the Government Code in conjunction with rule 408 of the Texas or Federal Rules of Evidence.

You also claim that the information at issue is excepted from disclosure under section 552.103, which 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[.]

Gov't Code § 552.103(a). However, you inform us that the information at issue was provided to the city by the potential adverse party to anticipated litigation. 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. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Because the information at issue has been obtained from the opposing party in the anticipated litigation, we conclude that the city may not withhold the information from disclosure under section 552.103.

Finally, you claim that the information at issue is excepted from disclosure under section 552.107(1). Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, information that reflects either client confidences to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990).

After a review of the information at issue, we conclude that it comprises neither client confidences to an attorney representing the city, nor the city's attorney's legal advice or opinions. *See id.* Accordingly, we conclude that the city may not withhold the submitted information from disclosure under section 552.107(1), and must, therefore, release the information to the requestor.

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).

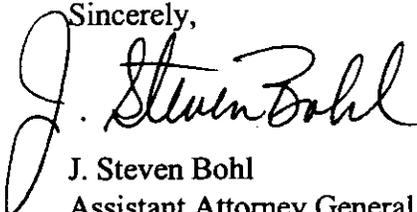
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 that reads "J. Steven Bohl". The signature is written in a cursive style with a large, looped initial "J".

J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/sdk

Ref: ID# 159345

Enc: Submitted documents

c: Mr. Charlie Castillo
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