



September 13, 2002

Mr. Edward H. Perry
Assistant City Attorney
City of Dallas
1500 Marilla, 7DN
Dallas, Texas 75201

OR2002-5132

Dear Mr. Perry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168563.

The City of Dallas (the “city”) received a request for “all information relevant to the eminent domain proceedings for the Estate of John Fred Bass.” The request also asks questions regarding the city’s plans for the piece of property at issue. Chapter 552 of the Government Code does not require the city to answer factual questions, perform legal research, or create new information in responding to this request. The city must make a good faith effort, however, to relate this request to information that the city holds or to which it has access. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism’d); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989), 362 at 2 (1983). We assume you have made such an effort in this instance. You state that you will make some of the requested information available to the requestor but claim that the information you have submitted for review is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

You contend that the Exhibit B is protected under section 552.107 of the Government Code. Section 552.107(1) excepts from disclosure information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office

¹We assume that the representative sample 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.

concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client 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). The privilege extends to communications "between the client or a representative of the client and the client's lawyer or a representative of the lawyer." Tex. R. Evid. 503(b)(1)(A). Having reviewed Exhibit B, we agree that many of the documents it contains reflect client confidences or attorney advice, opinion, or recommendation. This information, which we have marked, may be withheld under section 552.107(1). The remaining documents in Exhibit B may not be withheld under this exception as they contain neither client confidences nor an attorney's advice, opinion, or recommendation. Because you have not claimed any other exception applies to these documents, they must be released.

You assert that Exhibit C constitutes attorney work product that is excepted under section 552.111 of the Government Code. A governmental body may withhold attorney work product from disclosure if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. Open Records Decision No. 647 (1996). The first prong of the work product test, which requires a governmental body to show that the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) 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 2) 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. Open Records Decision No. 647 at 4 (1996). The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney's mental processes, conclusions, and legal theories. The work product privilege also encompasses the mental impressions, opinions, conclusions, or legal theories of an attorney's representatives. Tex. R. Civ. P. 192.5(b)(1).

You inform us that "[t]he documents in Exhibit C were prepared in anticipation of City of Dallas v. Estate of John Fred Bass, Deceased, et al." You state that all of these documents were prepared by an attorney or under the direction of an attorney. Based on these representations and our review of the submitted information, we agree that the documents in Exhibit C constitute protected work product and may be withheld under section 552.111 of the Government Code.

In summary, the city may withhold the types of communications that we have marked in Exhibit B as well as information like that submitted as Exhibit C. All other 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).

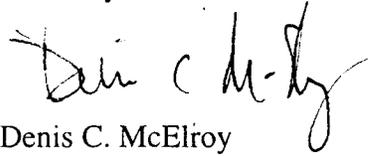
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 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, appearing to read "Denis C. McElroy". The signature is written in a cursive style with a large initial "D" and "M".

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/sdk

Ref: ID# 168563

Enc. Submitted documents

c: Mr. Roy H. Williams
2525 Ross Avenue, Suite 1001
Dallas, Texas 75201
(w/o enclosures)