OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 15, 2003

Ms. April M. Virnig
Taylor Olson Adkins Sralla Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2003-2536

Dear Ms. Virnig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179561.

The City of Haltom City (the "city") received two requests for information. The first request specified the following six categories of information: information relating to prisoners being signed in or out by elected officials during a specified period, copies of orders signed by a named judge permitting city council members to sign prisoners out for a specified period, copies of jail policies adopted by the city council or the municipal judge regarding the signing out of prisoners, copies of other policies regarding the signing out of prisoners, information relating to the use of prisoners for community service, copies of certain notices and minutes of meetings of the Volunteer Service Board for a certain period, copies of policies permitting the release of prisoners to perform community service, and information revealing whether any prisoners were released to perform community service. The second request called for memos related to changes in jail policies since 1999, and "[a]ny material released under the [first request.]" You state that you have released some of the requested information to the requestors. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

First, we note that the city did not fully comply with section 552.301 of the Government Code. Subsections (a) and (b) of section 552.301 require a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request." We note that, with respect to the first request,

you did not raise sections 552.107 and 552.111 until after the ten-business-day deadline had passed. Therefore, we find you have waived sections 552.107 and 552.111 as possible exceptions to the disclosure of the information encompassed by the first request. *See* Gov't Code § 552.302; Open Records Decision No. 663 (1999).

We now address your section 552.103 claim. 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.
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> . . . .
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> (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 state that the submitted information relates to twelve lawsuits alleging misconduct in the city's handling of female detainees filed against the city prior to the city's receipt of the information request. You have attached a list of these pending lawsuits as well as pleadings from some of the lawsuits. Accordingly, based on your representations and our review of the remaining submitted information, we conclude that the city has demonstrated that litigation was pending at the time the requests were received. We also find that the city has demonstrated that the information is related to the pending litigation for purposes of section 552.103(a). We therefore conclude that the submitted information is excepted from disclosure at this time under section 552.103 of the Government Code.[1]

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[1]As we are able to make this determination, we need not address your remaining arguments.

In reaching this conclusion, we assume that the opposing parties in the pending litigation have not seen or had access to the remaining submitted information. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). If the opposing party has seen or had access to information relating to the litigation, through discovery or otherwise, then there is no interest in withholding that information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Furthermore, the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). As we base our ruling on section 552.103, we need not address your other claimed exceptions.

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).

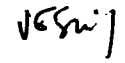
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 179561

Enc: Submitted documents

c: Mr. Tom Quinones
Attorney at Law
1720 North Beach Street, Suite 100
Haltom City, Texas 76111
(w/o enclosures)

Mr. Mike Lee
Fort Worth Star-Telegram
P.O. Box 915007
Fort Worth, Texas 76115
(w/o enclosures)