



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 23, 2003

Ms. Trudi Dill
Deputy City Attorney
City of Temple
Municipal Building
Temple, Texas 76501

OR2003-3509

Dear Ms. Dill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181539.

The City of Temple (the "city") received a request for sign permit applications made to the city for off-premises signs, a list of all such applications that were approved and issued by the city Planning and Zoning Department, a list of all such applications that were approved and issued by the city Superintendent of Construction and Safety Services, a list of all sign permit applications for off-premises signs that required platting of the property upon which the sign was to be located, and all applications made to the city to plat property for the purpose of development of any kind. The requestor limits his request to information relating to applications made under the sign ordinance that was in effect on July 1, 2000. You state that the city will release information pertaining to the requestor's own off-site sign permits to the requestor. You claim, however, 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 representative sample of information.¹ We have also considered comments submitted by the requestor. *See Gov't*

¹ 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.

Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

As a preliminary matter, we note your indication that the city is unable to provide information responsive to items 2 and 3 of the request in the requested format. You also indicate that to provide the information responsive to item 4 of the request, the city would have to create a list comparing the dates and locations of plat applications with dates and locations of sign permit applications. The Public Information Act (the "Act") generally does not require a governmental body to prepare information in a form requested by a member of the public. Open Records Decision No. 467 (1987). Furthermore, the Act does not require a governmental body to create or prepare new information in response to a request. Open Records Decision Nos. 572 (1990), 342 (1982). Thus, the city is not required to create new information in response to the present request. However, the Act does require a governmental body to make a good faith effort to relate a request to information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990); *see also Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976) (administrative inconvenience of providing public records is not grounds for refusal to comply with the Act). Here, you indicate that the city is able to relate items 2 and 3 of the request to the permit applications requested in item 1, which you have submitted for review.

You acknowledge that one of the submitted documents is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, 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:

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

The submitted permit application fee receipt relates to the receipt of funds by a governmental body. Thus, pursuant to section 552.022(a)(3), the city may only withhold the submitted permit application fee receipt if it is confidential under other law. Section 552.103 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103). Consequently, the submitted receipt may not be withheld pursuant to section 552.103 of the Government Code.

We next address your claim under section 552.103 with respect to the remaining submitted information. Section 552.103 of the Government Code 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.

A governmental body 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 was pending or reasonably anticipated on the date the governmental body received the request for information, 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). A governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

You have submitted a copy of the Plaintiff's Original Petition in *Paradigm Media Group, Inc. v. City of Temple and Temple Board of Adjustment*, Cause No. 196.63313, filed on February 27, 2003 in the 146th District Court of Bell County. In the lawsuit, the plaintiff seeks to have the court overturn the city Planning Director's denial of two sign permit applications submitted by the plaintiff. You advise that the city received the present request for information on March 10, 2003, after the date the lawsuit was filed, and you indicate that the information requested relates to the subject matter of the lawsuit. Based on your representations and our review of the submitted information, we conclude that the city was involved in pending litigation on the date it received the present request for information. Further, we conclude that the information in the submitted representative sample is related to the pending litigation. Accordingly, the city may generally withhold the remainder of the submitted information under section 552.103 of the Government Code.

However, you indicate, and the documents reflect, that the opposing party in the pending litigation may have had access to some of the submitted information. 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, any information to which the opposing party has had access may not be withheld pursuant to section 552.103. We also note that the applicability of section 552.103(a) ends when the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the city must release the marked permit application fee receipt pursuant to section 552.022(a)(3) of the Government Code. With the exception of any information to which the opposing party in the pending litigation has had access, the city may withhold the remainder of the submitted information under section 552.103 of the Government Code.

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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 181539

Enc: Submitted documents

c: Mr. Chuck Dennis
Paradigm Media Group, Inc.
P.O. Box 2303
Georgetown, Texas 78627
(w/o enclosures)