OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

August 12, 2003

Mr. Robert G. Schleier, Jr.
Schhleier & Brown
116 North Kilgore Street
Kilgore, Texas 75662

OR2003-5599

Dear Mr. Schleier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185828.

The City of Kilgore (the "city"), which you represent, received a written request for "any documents from [a named individual] that discuss pending or threatened litigation against the City of Kilgore or city commissioners." You contend that the requested information is excepted from required disclosure pursuant to section 552.103 of the Government Code.

To secure the protection of section 552.103 of the Government Code, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). Additionally, the governmental body must demonstrate that the litigation was pending or reasonably anticipated as of the day it received the records request. Gov't Code § 552.103(c). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

In this instance, you have provided this office with evidence that litigation against the city was reasonably anticipated on the date it received the current records request. Furthermore, you have demonstrated that the submitted information "relates" to that litigation for purposes of section 552.103. We note, however, that the information you seek to withhold consists of correspondence between the city and the opposing party's attorney. Consequently, the opposing party in the anticipated litigation has had prior access to all of the information at issue. Absent special circumstances, once information has been obtained by all parties to the

litigation, no section 552.103 interest exists with respect to that information.[1] Open Records Decision Nos. 349 (1982), 320 (1982). We therefore conclude that section 552.103 does not protect the requested information from required public disclosure and that the city must release all of the submitted 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 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

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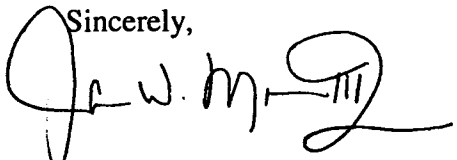
[1]We also note that the applicability of section 552.103 ends once the likelihood of litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/RWP/sdk

Ref: ID# 185828

Enc: Submitted documents

c: Mr. Derek Price
Kilgore News Herald
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Kilgore, Texas 75662
(w/o enclosures)