



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 2, 2004

Mr. Arthur L. Walker  
Ms. Krista A. Chacona  
Walker, Bright & Lewis, P.C.  
1609 Shoal Creek Boulevard, Suite 300  
Austin, Texas 78701

OR2004-0740

Dear Mr. Walker and Ms. Chacona:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195568.

The Capital Metropolitan Transportation Authority (the "authority"), which you represent, received a request for information relating to a former authority employee. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, 552.111, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Initially, we address the authority's obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See Gov't Code* § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body does not request an

attorney general decision as prescribed by section 552.301, the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You inform us that this request for information encompasses written communications between the authority and your office. You also state, however, that you have not submitted those communications, or representative samples of the communications, in seeking this decision.<sup>1</sup> Thus, with respect to the responsive information that you have not submitted to this office in requesting our decision, you have failed to comply with section 552.301. The information that you have not submitted is therefore presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from the public. The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You claim that the information that you have failed to submit is excepted from disclosure under section 552.107 of the Government Code. We note, however, that the authority's claim under section 552.107 does not provide a compelling reason for non-disclosure under section 552.302. In failing to comply with section 552.301, you have waived the authority's claim under section 552.107. *See* Gov't Code § 552.007; Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Therefore, the information that you have failed to submit may not be withheld from disclosure under section 552.107(1), and that information must be released to the requestor in its entirety.

We next note that much of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in part that

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:

---

<sup>1</sup>You inform us that these communications were not submitted because they are privileged and may not be disclosed. We note, however, that section 552.3035 expressly prohibits this office from disclosing information that is the subject of a request for an attorney general decision. *See* Gov't Code § 552.3035 (attorney general may not disclose to requestor or public information submitted under Gov't Code § 552.301(e)(1)(D)). Accordingly, this office routinely receives and reviews information that governmental bodies seek to withhold under the attorney-client and other privileges. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001) (addressing applicability of TEX.R.EVID. 503 and TEX.R.CIV.P. 192.5 to information encompassed by Gov't Code § 552.022); Open Records Decision Nos. 676 (2002) (addressing requirements for claiming and demonstrating applicability of attorney-client privilege under Gov't Code § 552.107(1)), 677 (2002) (addressing requirements for claiming and demonstrating applicability of attorney work product privilege under Gov't Code § 552.111).

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

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

Gov't Code § 552.022(a)(1), (3). In this instance, much of the submitted information consists of completed reports or investigations made of, for, or by the authority. That information, which we have marked, comes within the scope of section 552.022(a)(1) and must be released unless it is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. We also have marked information that comes within the scope of section 552.022(a)(3). That information must be released unless it is expressly confidential under other law. You seek to withhold the information that is subject to section 552.022 under sections 552.103, 552.107, and 552.111. We note, however, that sections 552.103, 552.107 and 552.111 are discretionary exceptions to disclosure that protect the governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 542 at 4 (1990) (statutory predecessor to Gov't Code § 552.103 may be waived), 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 677 at 10 (2002) (attorney work product privilege under Gov't Code § 552.111 may be waived). As such, sections 552.103, 552.107, and 552.111 are not other law that makes information confidential for purposes of section 552.022. Thus, you may not withhold any of the submitted information that is subject to section 552.022 under sections 552.103, 552.107, or 552.111.

The Texas Supreme Court has held, however, that the Texas Rules of Evidence and Texas Rules of Civil Procedure are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). You contend that some of the section 552.022 information is protected by the attorney-client and work product privileges. The attorney-client privilege also is found at Texas Rule of Evidence 503. The attorney work product privilege also is found at Texas Rule of Civil Procedure 192.5. Therefore, we will consider whether any of the information for which you claim these privileges is confidential under rules 503 and 192.5.

Texas Rule of Evidence 503 provides as follows:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;

(B) between the lawyer and the lawyer's representative;

(C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1). A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5). Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must: (1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the information is privileged and confidential under rule 503, provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You appear to claim that the information submitted as Exhibit J is protected by the attorney-client privilege. You have not demonstrated, however, that any of the information contained in Exhibit J that is subject to section 552.022 constitutes or documents a privileged attorney-client communication. Therefore, you may not withhold any of the information in Exhibit J under Texas Rule of Evidence 503.

Texas Rule of Civil Procedure 192.5 encompasses the attorney work product privilege. For the purpose of section 552.022 of the Government Code, information is confidential under rule 192.5 only to the extent that the information implicates the core work product aspect of the work product privilege. *See* Open Records Decision No. 677 at 9-10 (2002). Rule 192.5 defines core work product as the work product of an attorney or an attorney's representative, developed in anticipation of litigation or for trial, that contains the mental impressions, opinions, conclusions, or legal theories of the attorney or the attorney's representative. *See* TEX. R. CIV. P. 192.5(a), (b)(1). Accordingly, in order to withhold attorney core work product from disclosure under rule 192.5, a governmental body must demonstrate that the

material was (1) created for trial or in anticipation of litigation and (2) consists of the mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney's representative. *Id.*

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. *See Nat'l Tank v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993). A "substantial chance" of litigation does not mean a statistical probability, but rather "that litigation is more than merely an abstract possibility or unwarranted fear." *Id.* at 204. The second part of the work product test requires the governmental body to show that the materials at issue contain the mental impressions, opinions, conclusions, or legal theories of an attorney's or an attorney's representative. *See* TEX. R. CIV. P. 192.5(b)(1). A document containing core work product information that meets both parts of the work product test is confidential under rule 192.5, provided that the information does not fall within the scope of the exceptions to the privilege enumerated in rule 192.5(c). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You assert that the information submitted as Exhibit E constitutes work product. You do not inform us, however, that this information contains the mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney's representative. Therefore, you have not demonstrated that any of the information submitted as Exhibit E constitutes attorney work product for the purposes of section 552.022, and therefore the authority may not withhold any of that information under Texas Rule of Civil Procedure 192.5.

You also claim that some of the information encompassed by section 552.022 is confidential under section 552.101 of the Government Code. This section excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information that other statutes make confidential. Section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). In this case, the release of the submitted Form I-9's would be "for purposes other than for enforcement" of the referenced federal statutes. A Form I-9 may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system. Therefore, the Form I-9 information that we have marked must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

Criminal history record information (“CHRI”) obtained from the National Crime Information Center (“NCIC”) or the Texas Crime Information Center (“TCIC”) is confidential under federal and state law. Federal law governs the dissemination of CHRI obtained from the NCIC network. Federal regulations prohibit the release to the general public of CHRI that is maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”); *see also* Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* ORD 565 at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov’t Code § 411.089(b). Any CHRI generated by the federal government or another state may be disclosed only in accordance with the federal regulations. Any CHRI obtained from the Texas Department of Public Safety or another criminal justice agency must be withheld as provided by subchapter F of chapter 411 of the Government Code. Furthermore, when a governmental entity compiles a particular individual’s criminal history information, the compiled information takes on a character that implicates that individual’s right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); Open Records Decision No. 616 at 2-3 (1993).<sup>2</sup> Therefore, to the extent that the section 552.022 information contains any CHRI obtained from the NCIC or TCIC networks or any criminal history information that is private under *Reporters Committee*, the authority must withhold any such information under section 552.101 of the Government Code.

Next, we address your privacy claims under sections 552.101 and 552.102. Section 552.101 also encompasses constitutional and common-law rights of privacy. Constitutional privacy under section 552.101 protects two kinds of interests. *See* Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987); *see also Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). The first is the interest in independence in making certain important decisions related to the “zones of privacy,” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See* Open Records Decision No. 455 at 3-7 (1987); *see also Fado v. Coon*, 633 F.2d 1172 (5<sup>th</sup> Cir. 1981). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See* Open Records Decision No. 455 at 6-7 (1987); *see also Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5<sup>th</sup> Cir. 1985), *reh’g denied*, 770 F.2d 1081 (1985), *cert. denied*, 474 U.S. 1062 (1986). This

---

<sup>2</sup>Section 552.101 of the Government Code also encompasses the common-law right to privacy. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. See Open Records Decision No. 455 at 7 (1987). Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie v. City of Hedwig Village*, 765 F.2d at 492).

Information must be withheld from disclosure under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). The identities of victims and witnesses of alleged sexual harassment were held to be protected by common-law privacy in *Morales v. Ellen*. See 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied). This office also has determined that other types of information also are private under section 552.101. See Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private).

The common-law right to privacy also encompasses certain types of personal financial information. Prior decisions of this office have determined that financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. See, e.g., Open Records Decision Nos. 545 at 4 (1990) ("In general, we have found the kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding the receipt of governmental funds or debts owed to governmental entities"), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

You also claim that some of the submitted information is private under section 552.102. Section 552.102(a) excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" This exception is applicable to information that relates to public officials and employees. See Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). The privacy test under section 552.102(a) is the same as the test of common-law privacy under section 552.101 of the

Government Code. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.).

You assert that Exhibits F, I, and J contain private information. We note, however, that most of this information pertains directly to a former employee of the authority. As this office has often noted, the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. Thus, such information is not protected by privacy under sections 552.101 or 552.102. We have marked small amounts of information relating to other individuals that the authority must withhold under section 552.101 in conjunction with common-law privacy.<sup>3</sup> We conclude that none of the remaining information at issue is private under sections 552.101 or 552.102. *See also* Open Records Decision Nos. 405 at 2 (1983) (manner in which public employee performed his or her job cannot be said to be of minimal public interest), 444 at 4 (1986) (public employee's personnel file information will generally be available to public regardless of whether it is highly intimate or embarrassing), 470 at 4 (1987) (public employee's job performance does not generally constitute private affairs), 473 at 3 (1987) (fact that public employee receives less than perfect or even very bad evaluation not protected by common-law privacy), 542 at 5 (1990) (information regarding public employee's qualifications is of legitimate concern to public).

Next, we address your claim under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who timely requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time that the request for the information is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the authority may only withhold information under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date on which the authority received this request for information. The authority may not withhold information under section 552.117(a)(1) on behalf of a current or former employee who did not make a timely election under section 552.024 to keep the information confidential. You state, and have submitted documentation reflecting, that the information at issue relates to a former employee who timely elected under section 552.024 to keep his home address and telephone number, social security number, and family member information

---

<sup>3</sup>You note that the requestor is an attorney. You inform us that the authority believes that the requestor represents the alleged sexual assault victim to whom some of the marked information pertains. If the requestor is this individual's authorized representative, then he has a right of access to the marked information that identifies his client, and the authority may not withhold that information from the requestor on privacy grounds. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).

confidential. Therefore, the authority must withhold those types of information, which we have marked, under section 552.117(a)(1).

The authority also must withhold some of the section 552.022 information under section 552.130 of the Government Code. This section excepts from public disclosure information that relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1)-(2). Section 552.130(a)(1) is applicable to information that relates to a Texas motor vehicle operator's or driver's license. Section 552.130(a)(2) encompasses information that relates to a Texas motor vehicle title, registration, or vehicle identification number. We have marked the submitted information that must be withheld from disclosure under section 552.130.

A small amount of the section 552.022 information comes within the scope of section 552.136 of the Government Code. This section provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked the information that the authority must withhold under section 552.136.

With regard to the submitted information that is not subject to section 552.022 of the Government Code, we address your claim under section 552.103. This section provides in part:

(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.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) that litigation was pending or reasonably anticipated on the date of its receipt of the request for information *and* (2) that the information at issue is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1984, writ ref'd n.r.e.); *see also* Open Records Decision No. 551 at 4 (1990). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *Id.*

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish that litigation is reasonably anticipated, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *Id.* Among other examples, this office has concluded that litigation was reasonably anticipated where the opposing party took the following objective steps toward litigation: (1) filed a complaint with the Equal Employment Opportunity Commission ("EEOC"), *see* Open Records Decision No. 336 (1982); (2) hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and (3) threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

You contend that the submitted information that is not subject to section 552.022 relates to civil litigation that was reasonably anticipated when the authority received the request for the information at issue. You inform us that this information relates to a former employee who is alleged to have sexually assaulted a passenger on a bus he was operating. You state that the authority has received numerous telephone calls from individuals who identified themselves as attorneys for the alleged victim. You also state that one of these individuals

submitted a notice of claim to the authority under the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code, prior to the authority's receipt of the request for information. Based on your representations and our review of the related documentation, we find that you have demonstrated that the authority reasonably anticipated litigation on the date of its receipt of this request for information. We also find that the information at issue under section 552.103 relates to the anticipated litigation. We conclude that the submitted information that is not subject to section 552.022 is excepted from disclosure at this time under section 552.103.<sup>4</sup>

In reaching this conclusion with regard to the information in question, we assume that the opposing party in the anticipated litigation has not seen or had access to any of this 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 anticipated 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). We also note that section 552.103 is no longer applicable once the related litigation concludes or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary: (1) the responsive information that you have not submitted must be released under section 552.302 of the Government Code; (2) the authority must withhold some of the submitted information that is subject to section 552.022 under sections 552.101, 552.117, 552.130, and 552.136; (3) the requestor may have a right of access to some of the information that is protected by common-law privacy under section 552.101; (4) the authority may withhold the submitted information that is not subject to section 552.022 under section 552.103; and (5) the information that is not excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, or 552.103 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.

---

<sup>4</sup>As we are able to make this determination under section 552.103, we do not address your other claim under this exception.

*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).

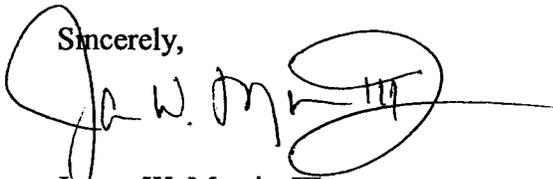
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a large, stylized flourish extending to the right.

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

JWM/sdk

Ref: ID# 195568

Enc: Submitted documents

c: Mr. Bradley G. Urrutia  
Lopez & Urrutia, L.L.P.  
611 South Congress Avenue, Suite 340  
Austin, Texas 78704  
(w/o enclosures)