



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 22, 2005

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2005-10576

Dear Ms. Silver:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 236694.

The Dallas Police Department (the "department") received a request for the following: 1) recordings and surveillance video from the pick-up/loading area outside of Dallas Love Field (the "airport") on a specified date; 2) information pertaining to department officers on duty at the airport on the specified date; 3) emergency medical response information from the airport on the specified date; 4) information used in or resulting from a department Internal Affairs Investigation of a specified event on the specified date; 5) all non-confidential information contained in the personnel files of two named department officers; 6) any records from the Dallas County jail regarding the arrest of a named individual on the specified date; 7) information pertaining to City of Dallas and Dallas County employees who interacted with the named individual on the specified date; 8) information pertaining to witnesses of the events at issue on the specified date; 9) the result of any tests performed on the named individual while in police custody; 10) a complete report of all incidents at the airport over a one year period; 11) a complete set of any and all records used by an Assistant City Attorney while investigating the incident at issue; and 12) any and all other information related to the event at issue. You state that the department will release some of the requested information but claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code and rule 192.5 of the Texas Rules of Civil Procedure. We have considered the exceptions you claim and reviewed the

submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that you have only submitted information regarding a liability claim arising from the event at issue. To the extent any additional responsive information existed on the date the department received this request for information, we assume it has been released. If the department has not released any such records, it must do so at this time. *See* Gov't Code §§ 552.301(a), 302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.103 of the Government Code provides, in relevant 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 department 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. *Univ. 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 department must meet both prongs of this test for information to be excepted under section 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* In Open Records Decision No. 638 (1996), this office stated that a governmental body has met its burden of showing that litigation is reasonably anticipated when it received a notice of claim letter and the

governmental body represents that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act, chapter 101 of the Texas Civil Practice & Remedies Code, or an applicable municipal ordinance. You state that on April 9, 2005 and again on April 20, the City of Dallas (the "city") received notice of claim letters that met the requirements of Chapter XXIII of the Dallas City Charter which requires written notice before any claim for injury or damage may be considered by the city. You have provided this office with copies of these letters. The claim raised in these letters relates to the same event that is the subject of the current request for information. The department received this request on September 9, 2005. Therefore, we find that you have established that litigation was reasonably anticipated on the date of your receipt of the request for information. We further conclude that you have made the requisite showing that the submitted information relates to that anticipated litigation for purposes of section 552.103(a). Thus, you may withhold the submitted information under section 552.103 of the Government Code. As our ruling on this issue is dispositive, we need not address your remaining argument.

Generally, however, 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, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 236694

Enc. Submitted documents

c: Mrs. Kristy M. Midkiff
4214 Arbor Creek Drive
Carrollton, Texas 75010-4101
(w/o enclosures)