



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2006

Ms. Melanie Barton
Assistant District Attorney
Civil Division Admin Building
Dallas County
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2006-06717

Dear Ms. Barton:

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# 252692.

The Dallas County Constable, Precinct 5 (the "constable") received two requests for twelve categories of information pertaining to two specified cases. You claim that 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 Code § 552.304* (providing for submission of public comments).

Initially, we note that some of the submitted information is subject to section 552.022 of the Government Code. This section 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:

...

¹We 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.

(17) information that is also contained in the public court record[.]

Gov't Code § 552.022(a)(17). In this instance, some of the submitted information consists of documents filed with a court. Therefore, this information, which we have marked, must be released under section 552.022 unless 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 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 section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the constable may not withhold the information subject to section 552.022 under section 552.103 of the Government Code. As you do not raise any other exceptions against disclosure for this information, it must be released pursuant to section 552.022(a)(17) of the Government Code.

You claim that the remaining information is excepted under section 552.103 of the Governmental Code, which provides, in relevant part, 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.

Gov't Code § 552.103(a), (c). 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. *Univ. of Tex. Law Sch. v. Tex. 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 section 552.103(a).

You represent to this office that the requested information relates to three cases currently pending appeal: 1) *Dallas County Constable Precinct 5 Michael Dupree vs. Garden City*

Boxing Club, Inc., Cause No. 05-06-00398-CV; 2) *Dallas County Constable Precinct 5 Michael Dupree vs. Garden City Boxing Club, Inc.*, Cause No. 05-05-01224-CV; and 3) *Dallas County Constable Precinct 5 Michael Dupree vs. Garden City Boxing Club, Inc.*, Cause No. 05-06-00379-CV. Accordingly, we find that the constable has established that litigation was pending when it received this request for information. We further find that the submitted information is related to the litigation for the purposes of section 552.103 of the Government Code. We note, 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 all of the parties in the pending litigation is not excepted from disclosure under section 552.103(e). Here, the requestor, the attorney representing the opposing party in the litigation, has seen or had access to most of the documents at issue. Accordingly, to the extent that the remaining information has been obtained from or provided to the requestor, it is not excepted from disclosure under section 552.103(a). However, to the extent that the remaining information has not been obtained from or provided to the requestor, it may be withheld from disclosure under section 552.103(a). We note, however, that the applicability of section 552.103(a) ends once the litigation has concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the court-filed document we have marked must be released in accordance with section 552.022(a)(17) of the Government Code. To the extent the remaining information has been obtained from or provided to the requestor, it is not excepted from disclosure under section 552.103(a) of the Government Code. To the extent the remaining information has not been obtained from or provided to the requestor, it may be withheld from disclosure under section 552.103(a).

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

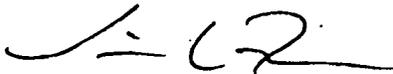
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Oper. 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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/krl

Ref: ID# 252692

Enc. Submitted documents

c: Mr. Andrew R. Korn
4221 Avondale Drive
Dallas, Texas 75219
(w/o enclosures)