



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 16, 2010

Mr. J. David Dodd, III  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR2010-05474

Dear Mr. Dodd:

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# 376148 (Kaufman ID #41874).

The City of Kaufman (the "city"), which you represent, received a request for the following five categories of information: (1) documents, citations, records of violations, reports, or correspondence containing observations, statements, or descriptions by city staff regarding a specified horse slaughter facility or its operations; (2) information regarding the specified facility's industrial waste permit; (3) citations, records of violations, and correspondence related to the adjudication and disposition of the specified facility's violation of city ordinances or its waste water permit; (4) certain jury trial requests; and (5) information regarding money the specified facility owes the city or money in escrow. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have only submitted photographs, waste water reports, and jury trial requests for our review. You have not submitted any citations, correspondence, information regarding the specified facility's industrial waste permit, information reflecting the facility's violation of city ordinances or its waste water permit, or information regarding money owed the city or in escrow. We assume to the extent information responsive to these portions of the request existed when the city received the request for information, you have released it to the requestor. If not, then you 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).

Next, we note much of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent 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:

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

....

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

Gov't Code § 552.022(a)(1), (17). The submitted information includes completed analytical reports and a court-filed document. The reports that were completed for the city fall within the purview of subsection 552.022(a)(1), and the court-filed document is subject to subsection 552.022(a)(17). The city may only withhold the information subject to subsection 552.022(a)(1) if it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under "other law." The city may only withhold the information subject to subsection 552.022(a)(17) if it is confidential under "other law." You claim the information subject to section 552.022 is excepted from disclosure under section 552.103 of the Government Code. However, this section is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022. *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. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold the information subject to section 552.022 under section 552.103 of the Government Code. As you raise no further exceptions to disclosure of the reports completed for the city or the court-filed document, this information must be released.

We next turn to your claim under section 552.103 of the Government Code for the information not subject to section 552.022, which includes the submitted photographs and the analytical reports that were completed for the specified facility. Section 552.103 provides in 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). The city 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 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). The city must meet both prongs of this test for information to be excepted under 552.103(a).

You inform this office, and the submitted court-filed document reflects, that prior to receiving this request the city was party to at least one lawsuit opposing the specified facility. Thus, based on your representations and our review, we agree litigation involving the city was pending on the date the request was received. However, you do not provide any arguments explaining, and we are unable to discern, how the submitted photographs relate in any way to the pending litigation. Thus, we conclude you have failed to demonstrate the applicability of section 552.103 of the Government Code to the photographs. Although you do not explain how the remaining analytical reports relate to the pending litigation, the court-filed document reflects the lawsuit pertains, at least in part, to alleged waste water regulation violations by the specified facility. Upon review, some chemicals named in the waste water test results found in the remaining analytical reports are named as the basis for the litigation in the court-filed document. Thus, because we are able to determine the reports prepared for the specified facility relate to the lawsuit at issue in the court-filed document, we find the analytical reports not subject to section 552.022 are related to the litigation.

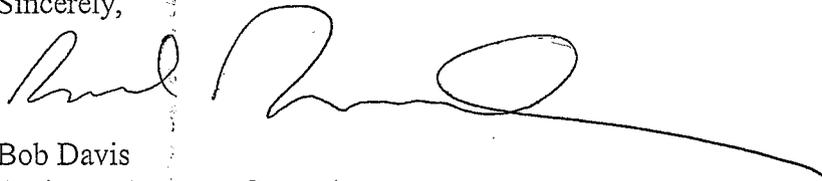
However, once information is obtained from or provided to all the opposing parties in the litigation, there is no interest in withholding that information under section 552.103. See Open Records Decision Nos. 349 (1982), 320 (1982). The remaining analytical reports reflect they were prepared for and mailed to the specified facility, which is the city's lone

opposing party in the only lawsuit we are able to determine is related to these reports. Thus, because you have not explained how these reports relate to pending or anticipated litigation in which the city opposes a party other than the specified facility, these documents may not be withheld under section 552.103 of the Government Code. As you have raised no other exceptions to disclosure, the submitted information must be released in its entirety.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a long horizontal flourish extending to the right.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 376148

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)