



March 15, 2000

Ms. Marianne Landers Banks
City Attorney
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR2000-1038

Dear Ms. Banks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Texas Government Code. Your request was assigned ID#133581.

The City of Georgetown ("the city") received a request for various records including a copy of the city manager's self-appraisal. You have released some of the requested information, but claim that a portion is excepted from disclosure under section 552.103 of the Government Code. You seek to withhold one document entitled "Structural Assessment of Aeration Basin/Clarification and Sludge Holding Tank Walls," which was attached to the city manager's self-appraisal. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. To show that section 552.103 is applicable, the governmental body must demonstrate that: 1) litigation is pending or reasonably anticipated at the time of the request, and 2) the information at issue is related to that litigation. *University 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).

You assert that the city is currently involved in a lawsuit awaiting trial, *Raum v. City of Georgetown*, cause number 94-021-C26, pending review of a companion case by the Texas Supreme Court.¹ You have provided a letter from the attorney representing the city in both cases in which he asserts that the structural assessment is related to the pending litigation.

¹You have identified the companion case of *Domel v. City of Georgetown*, Cause No. 99-1297.

We conclude that you have shown litigation is pending and that the document submitted is related to the litigation for purposes of section 552.103. Thus, you may withhold the submitted information from public disclosure under section 552.103.

Generally, however, once information has been obtained by all parties to all the litigation matters you have raised 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 parties in the lawsuits you raise is not excepted from disclosure under section 552.103(a), and it must be disclosed. The applicability of section 552.103(a) ends once litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We note, however, that a *completed* report is expressly made public by section 552.022(a)(1) of the Government Code and is not excepted from required disclosure unless it is expressly made confidential by other law. Gov't Code § 552.002(a)(1). Section 552.103 is a discretionary exception and does not make information confidential. The structural assessment appears to be a completed report and, as such, must be released.

In summary, if the requested information is a completed report, it must be released pursuant to section 552.022(a)(1). Otherwise, section 552.103 permits you to withhold the information.

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).

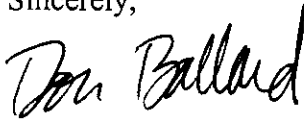
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Don Ballard
Assistant Attorney General
Deputy Chief, Open Records Division

JDB/CHS/ljp

Ref: ID# 133581

Encl. Submitted documents

cc: Mr. Michael Eddleman
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