



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 22, 1994

Mr. David A. Talbot, Jr.
General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR94-743

Dear Mr. Talbot:

The Amistead Area Narcotics Task Force (the "task force") received a request for certain records pertaining to the task force. The task force receives funding through the Texas Narcotics Control Program, which is administered by the Criminal Justice Division of the Office of the Governor. You have asked if the requested information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27199.

You contend that the information is excepted from disclosure under section 552.103. To show the applicability of section 552.103, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *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 (1990) at 4. Both prongs of the section 552.103 test must be met to show the applicability of the exception.

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. There must be more than a "mere chance" of litigation for it to be reasonably anticipated. *Id.* You submitted to this office a letter from the requestor, Ana Markowski Smith, the county attorney for Val Verde County, stating that Val Verde County and the City of Del Rio have prepared a lawsuit to file in federal court concerning the administration of funds for the task force. You have therefore shown that litigation is reasonably anticipated. Open Records Decision No. 555 (1990) at 2.

You also submitted to this office four notebooks of information.¹ The information you have submitted is related to the litigation. However, it appears that Val Verde County and the City of Del Rio have seen or had access to much of this information. Generally, once information has been obtained by all parties to the litigation, no section 552.103 interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. When the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there is no justification for now withholding that information from the requestor pursuant to section 552.103.

We note also that some of the documents appear to be ordinances and records of public proceedings that may not be withheld from disclosure. Open Records Decision Nos. 551 at 2-3 (city ordinances are public); 221 (1979) (official records of governmental body's public proceedings are open). Information that is not otherwise public and that the opposing parties in the anticipated litigation have not seen or had access to may be withheld from disclosure under section 552.103.² The applicability of section 552.103 also ends once litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/KHG/rho

¹The requestor asked for tapes and other documents that were not in the notebooks. You are not required to provide the requestor information that does not exist. Open Records Decision No. 362 (1983) at 2. However, if the task force has other responsive information such information is presumed to be public. Gov't Code § 552.302 (failure to make timely request for attorney general decision leads to presumption that requested information is public).

²Since the section 552.103 exception is discretionary with the governmental entity asserting the exception, it is within the task force's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

Ref: ID# 27199

Enclosures: Submitted documents

cc: Honorable Ana Markowski Smith
Val Verde County Attorney
207 East Losoya
Del Rio, Texas 78840
(w/o enclosures)