



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1994

Mr. Michael Shaunessy
Bickerstaff, Heath & Smiley
San Jacinto Center, Suite 1800
98 San Jacinto Boulevard
Austin, Texas 78701-4039

OR94-029

Dear Mr. Shaunessy:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.¹). Your request was assigned ID# 22513.

The City of Leander (the "city") received an open records request for certain records relating to the cost and financing of a golf course that you contend may be withheld from the public pursuant to the Open Records Act, section 552.103(a) of the Government Code (former section 3(a)(3), V.T.C.S. article 6252-17a). The city states that the documents relate to an ongoing water rate dispute between the city and the requestor which has been submitted to the Texas Water Commission (the "commission") for its consideration. The city also states that there is ongoing discovery in the matter pursuant to a scheduling order issued by the commission on the dispute.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding to which the state or a political subdivision is or will be a party. Open Records Decision No. 551 (1990). In this instance, you have made the requisite showing that the requested information relates to reasonably anticipated

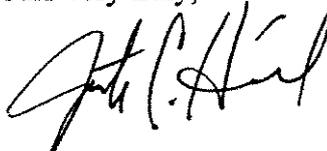
¹We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

litigation for purposes of section 552.103(a). The requested records may therefore be withheld.

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) (former section 3(a)(3)) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that 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).²

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this 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,



Juanita C. Hernandez
Special Assistant Attorney General
Open Government Section

JCH/rho

Ref.: ID# 22513

Enclosures: Submitted documents

cc: Ms. Sue Brooks Littlefield
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(w/o enclosures)

²Section 552.103 resolves this request and was the only section raised by the city with this request. The requestor's arguments in its brief addressing sections 552.107 and 552.111 need not be addressed.