



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1994

Mr. Charles Griffith, III
Deputy City Attorney
City of Austin
Department of Law
P.O. Box 1088
Austin, Texas 78767-8828

OR94-111

Dear Mr. Griffith:

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# 22158.

The City of Austin received an open records request for certain records 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).² 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. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). The requested records may therefore be withheld.

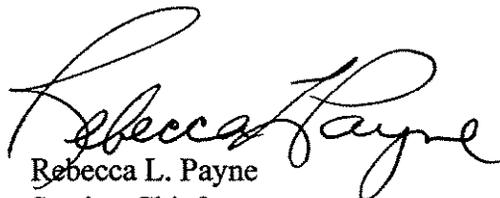
¹We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.*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

²While your request letter refers to section 3(a)(11) rather than section 3(a)(3), your arguments and the authorities you cite make it clear that you are actually raising the "litigation exception" of section 3(a)(3) (now found at section 552.103(a) of the Government Code).

In reaching this conclusion, however, we assume that the opposing party to the 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 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).

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,



Rebecca L. Payne
Section Chief
Open Government Section

RLP/KHG/rho

Ref.: ID# 22158

Enclosure: Submitted documents

cc: Ms. Susan G. Morrison
Attorney At Law
805 West 10th Street, Suite 101
Austin, Texas 78701
(w/o enclosures)