



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 31, 1994

Ms. Gretchen Kuehn Bohnert
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR94-145

Dear Ms. Bohnert:

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 The City of Houston (the "city") received two requests for "a copy of Mr. Bass's correspondence to the Mayor of Houston relative to the Houston-WPF contract extension." The first request was assigned ID# 22224; the second request was assigned ID#23124.

The city has released some of the information to the first requestor. We assume that the city intends to release the same document to the second requestor. You contend, however, that sections 552.103 and 552.111 of the Government Code except the remaining information from required public disclosure.

You first contend that section 552.103 excepts the information from disclosure because the first requestor has indicated his intent to sue if the city terminated the contract that is the subject of the requested information; the city council voted to terminate the contract on November 3, 1993; and the second requestor informed another city attorney that "the city should anticipate litigation from his client with regard to the dispute."

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. 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.

Section 552.103(a) excepts information

(1) relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party; and

(2) that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

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 reasonably anticipated 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) 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).

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,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

Ref.: ID# 22224
ID# 23124
ID# 22578

Enclosures: Submitted documents

cc: Mr. W.L. Garlic, Sr.
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