



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 27, 1995

Ms. Sandra C. Joseph  
Open Records Counsel/Disclosure Officer  
Office of the Comptroller of Public Accounts  
LBJ State Office Building  
111 East 17th Street  
Austin, Texas 78774

OR95-1287

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36146.

The Comptroller of Public Accounts (the "comptroller") received an open records request for records pertaining to a business that has requested a redetermination hearing on the sales and use tax audit of its records. You contend that section 552.103 of the Government Code exempts the requested information from public disclosure because the records "relate" to the requested redetermination hearing.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. 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). *See Open Records Decision No. 588 (1991) (information related to a contested case under Administrative Procedure and Texas Register Act before an administrative agency, to which the state is or may be a party, is "information relating to litigation" for purposes of litigation exception). See also 34 TAC §§ 1.3, 1.33 (redetermination hearings are "contested cases"). But see 34 TAC § 1.19 (providing parties to contested case qualified right of access to "all documents on file in the case").*<sup>1</sup>

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<sup>1</sup>We do not address in this ruling whether section 1.19 affords the requestor a special right of access to the records at issue in this particular instance.

The requested records may therefore be withheld pursuant to section 552.103, but only to the extent that the records have not been previously seen by the business entity that is requesting the redetermination hearing. 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 (1982), 320 (1982). To the extent that the business entity has seen or had access to these records, there would be no justification for now withholding those records 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).<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes  
Assistant Attorney General  
Open Records Division

KPB/RWP/rho

Ref: ID# 36146

Enclosures: Submitted documents

cc: Mr. Sash Chopra  
P.O. Box 59833  
Dallas, Texas 75229  
(w/o enclosures)

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<sup>2</sup>You do not argue, and thus we do not address, the extent to which any of the records at issue are deemed confidential under the Tax Code.