



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 28, 1995

Ms. Tamara Armstrong
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR95-1605

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. Your request was assigned ID# 35261.

Travis County (the "county") has received two open records requests for information related to the intersection of McKinney Falls Parkway and Burleson Road which was the site of a major traffic accident that resulted in several fatalities. You state that since the county previously released to the public some of the requested information, the county will release that information to the requestors. You have submitted for our review other documents responsive to the requests that you claim may be excepted from required public disclosure pursuant to section 552.103(a) of the Government Code. You *inform us that the county has been named as a defendant in a civil lawsuit arising out of the traffic accident.*

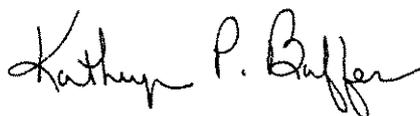
To show that section 552.103(a) is applicable, the county must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. 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.

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, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 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).

We are resolving this matter with this 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 may not be relied upon as a previous determination 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/rho

Ref: ID# 35261

Enclosures: Submitted documents

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