



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 23, 1996

Ms. Elizabeth Lutton
Assistant City Attorney
City of Arlington
P.O. Box 231
Arlington, Texas 76004-0231

OR96-0227

Dear Ms. Lutton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38200.

The City of Arlington (the "city") received a request for several categories of documents, including "all notes and all papers that you and Jack Thompson did on 11/1/95 to 1/3/96." You state that, as you believed this request to be too broad, the city asked the requestor to narrow his request. The requestor orally clarified his request by asking for all notes related to the grievance he filed. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claimed and have reviewed the documents at issue.

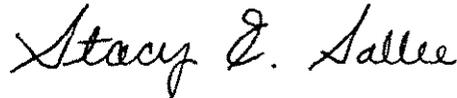
Section 552.103(a), the "litigation exception," *excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing 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. The city must meet both prongs of this test for information to be excepted under section 552.103(a).*

In your original letter to this office, you contended that litigation was reasonably anticipated. While your request for a ruling on the city's claimed exceptions to disclosure was pending at this office, the requestor did file suit against the city, alleging

discrimination and retaliation for whistleblowing. Therefore, the city has met the first prong of the test. After reviewing the documents, we conclude that they are related to the litigation. Therefore, the city may withhold the requested documents under section 552.103. We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, 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 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref: ID# 38200

Enclosures: Submitted documents

cc: Mr. Robert González
(w/o enclosures)