



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 13, 1996

Mr. John Steiner  
Division Chief  
City of Austin Law Department  
P.O. Box 1088  
Austin, Texas 78767-1088

OR96-0326

Dear Mr. Steiner

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# 38946.

The City of Austin (the "city") received a request for information seeking any and all records "pertaining to the East Austin Tank Farm, generally, and Exxon's terminal at 1127 Springdale, specifically." You contend that the information responsive to this request is excepted from required public disclosure based on section 552.103 of the Government Code. You have submitted a representative sample of the information for our review.

Section 552.103(a) applies to information:

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

(2) that the attorney general or the attorney of the political subdivision 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. 588 (1991). You have submitted

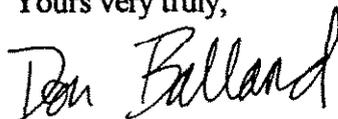
several court pleadings and documents in support of your claim. You also state that although several parties have reached a settlement, the city remains a party to the ongoing litigation. In this instance, you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). The city may, therefore, withhold the requested information.

Because the pending litigation is approaching trial, however, there may be documents within the requested information to which the opposing parties may have already had access. Generally, 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). Because you have only submitted a representative sample of the requested information, we cannot determine what information has been seen by the opposing party. Thus, information responsive to the request that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed.

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 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,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref.: ID# 38946

Enclosures: Submitted documents

cc: Mr. Kevin C. Almeter  
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(w/o enclosures)