



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 9, 1996

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

OR96-0518

Dear Ms. Armstrong:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 27149.

Travis County (the "county") has been involved in a drainage ditching and culvert installation project on Topper Lane in Bear Creek Estates. The county received a request for information about that project. The county also received two letters from landowners who objected to the project, one of whom sought to have the excavation made by the city near his property refilled. You contend that the information at issue is excepted from disclosure under section 552.103(a) of the Government Code.

To demonstrate the applicability of section 552.103(a), the county has the burden of 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. You contend that litigation is reasonably anticipated because of the landowners' objections to the project and because the county is prepared to institute condemnation proceedings. In support of your contention that litigation is reasonably anticipated, you rely upon Open Records Decision No. 311 (1982), which discussed whether litigation was reasonably anticipated by the Texas Municipal Power Agency:

You advise that no litigation is presently pending. We understand, however, that the agency has determined the location of the particular easement it needs, which will involve a specific tract of land, and that although the agency is still seeking to acquire the

easement through good faith negotiations, it will resort to condemnation proceedings, if necessary, in order to acquire the easement. Because a condemnation proceeding will be initiated if the negotiations are not fruitful, we agree with your determination that litigation is, at the present time, "reasonably anticipated in regard to a specific matter," and, therefore, that section [552.103] is applicable. We are also of the opinion that the information contained in the four documents would be "related" to ensuing litigation within the meaning of section [552.103].

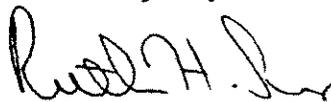
Id. at 2.

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986). Based on the information provided this office, litigation appears to be reasonably anticipated. The documents at issue are related to that anticipated litigation. Thus, you have shown the applicability of section 552.103(a).

We note, however, that section 552.103(a) is not applicable if the condemnation action has concluded, if the property in dispute has otherwise been obtained by the county, or if the other parties to the anticipated litigation have already had access to the information at issue. Attorney General Opinion MW-575 (1982) at 2; Open Records Decisions Nos. 350 (1982) at 3, 349 (1982) at 2.

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 27149

Enclosures: Submitted documents

cc: Mr. Robert D. Hejl
P.O. Box 541
Manhaca, Texas 78652-0541
(w/o enclosures)