



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 22, 1996

Mr. Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR96-0769

Dear Mr. Smith:

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# 24095.

The City of Desoto (the "city") has received a request for "[a]ll charges of sexual harassment and wrongful arrest claims made by" a city employee.<sup>1</sup> You claim that the requested information is excepted from required public disclosure under sections 552.101, 552.102 and 552.103 of the Government Code.

Section 552.103(a) excepts 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

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<sup>1</sup>We note that the request for records consists of seven itemized requests for documents. The city states that items 1, 2, 3, 5, 6 and 7 have been responded to by a separate letter. The documents at issue in items 1, 2, 3, 5, 6 and 7 are not addressed by this ruling. The requestor also seeks any wrongful arrest claims made by the city employee. You state that no such claims exist. The Open Records Act applies only to information in existence. Open Records Decision Nos. 572 (1990), 558 (1990), 555 (1990).

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Information must relate to litigation that is pending or reasonably anticipated to be excepted under section 552.103(a). *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

You state that the requested information concerns a material witness for the city in a pending law suit and that it could be introduced as evidence to impeach him. Section 552.103(a) is intended to prevent the use of the Open Records Act as a method of avoiding the rules of discovery. Open Records Decision No. 551 (1990) at 4. "By excepting information from required public disclosure under the Open Records Act when access to such material is more appropriately sought through discovery, [section 552.103(a)] protects the discovery process and avoids interference in matters properly resolved in court." *Id.* Because you have demonstrated that the requested information relates to pending litigation, you may withhold the requested information under section 552.103(a) of the Government Code.<sup>2</sup> As we resolve this matter under section 552.103(a), we need not address the applicability of sections 552.101 and 552.102 of the Government Code.

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,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/LBC/rho

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<sup>2</sup>Section 552.103(a) only applies while litigation is reasonably anticipated and during the pendency of the litigation. Once all parties to the litigation have had access to the information through discovery or otherwise, section 552.103(a) may no longer be claimed with respect to a particular lawsuit. Open Records Decision No. 454 (1986).

Ref.: ID# 24095

Enclosures: Submitted documents

cc: Mr. Andrew B. Sommerman  
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(w/o enclosures)