



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 4, 1996

Mr. Mark S. Houser
Vial, Hamilton, Koch & Knox, L.L.P.
1717 Main Street, Ste. 4400
Dallas, Texas 75201-4605

OR96-0872

Dear Mr. Houser:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39466.

The City of Highland Village (the "city") received a request for a "tally of City Attorney Mark Houser's work hours and subsequent monies garnered (and/or billing statements to the city from his office) as a result of his work on the Peggy Franklin/Terri Crabtree - and David Farrar, et al. - cases." You inform us that the Franklin/Crabtree lawsuit has been settled and a Protective Order entered by the Court and that the Farrar lawsuit, which you state is "inextricably intertwined" with the Franklin/Crabtree lawsuit, is currently pending and in active litigation. You further state that no record exists which sets forth the total amount of attorneys fees charged on these cases but, rather, the billing statements reference all matters pertaining to your representation of the city. You have submitted a representative sample of these billing statements and contend that certain highlighted portions are excepted from disclosure under section 552.103(a).

To show the applicability of section 552.103(a), a governmental entity must show 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. It is apparent from the billing statements that the city is a party to pending litigation. Our review of the records at issue shows that these records are related to the subject of the litigation. Since the city has shown the applicability of section 552.103(a), the highlighted portions of the records at issue may be withheld from disclosure.

In making this determination, we note that you have indicated that the documents at issue have not been seen by the opposing party to the litigation. 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 No. 349 (1982) at 2. If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding those records from disclosure pursuant to section 552.103(a). Also, 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) at 3.

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 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,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 39466

Enclosures: Submitted documents

cc: Mr. Ben Tinsley, Reporter
Harte-Hanks Community Newspapers
P.O. Box 308
Lewisville, Texas 75067
(w/o enclosures)