



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 5, 1996

Ms. Mindy Ward
City Attorney
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902

OR96-1393

Dear Ms. Ward:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 33603.

The City of San Angelo (the "city") has received a request for the following information:

Any and all documentation compiled by the City of San Angelo regarding any investigation of the contamination of Mr. Herzog's property, or any surrounding properties, in the vicinity of the Old Ballinger Highway, from the San Angelo City landfill.

You contend that the requested information is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

You have submitted to this office a notice of claim letter from an attorney alleging damages to his client's property. You have supplied copies of the documents at issue, which are related to the anticipated litigation. Because your request for a decision from this office was made prior to the issuance of Open Records Decision No. 638 (1996), this office will assume that you are representing that the notice letter you received satisfies the requirements of the TTCA, or applicable municipal statute or ordinance. If this assumption is correct you may withhold from disclosure the requested documents at issue.¹

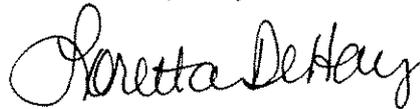
¹We have reviewed the records you submitted to this office as responsive to the request, and agree that they are related to the anticipated litigation.

We note that if in the future you assert that section 552.103(a) is applicable on the basis of a notice of claim letter, you should affirmatively represent to this office that the letter complies with the requirements of the TTCA or applicable municipal statute or ordinance. In reaching this conclusion, we assume that the opposing party to the litigation has not previously had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a) interests exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the opposing party in the pending litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a).

We note that the applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We also note that since the section 552.103(a) exception is discretionary, Open Records Decision No. 542 (1990) at 4, the city may choose to release the information. Gov't Code § 552.007.

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 these records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/SAB/rho

Ref.: ID# 33603

Enclosures: Submitted documents

cc: Mr. Jon Mark Hogg
Ratliff & Edwards
P.O. Drawer 1588
San Angelo, Texas 76902-1588
(w/o submitted documents)