



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 13, 1996

Kevin B. Laughlin  
First Assistant City Attorney  
The City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR96-1446

Dear Mr. Laughlin:

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#37441.

The City of Midland (the "city") received a request for:

1. The contract the City of Midland has with the Law firm of Cotton, Bledsoe, Tighe and Dawson, for services rendered the City of Midland;
2. All monies paid out to any member of the Law Firm of Cotton, Bledsoe, Tighe & Dawson;
3. All monies paid out to Cotton, Bledsoe, Tighe & Dawson from the year 1992 through present time;
4. This includes all attorneys in the firm from the time period of 1992 thru the present date.

You indicate that you have already forwarded to the requestor documents which you view as responsive to the original request including copies of a redacted computer printout of the city's accounts payable system which itemizes by check number each payment of fees and/or expenses made to the subject law firm but which does not directly reference which case or group of cases the payment encompasses. The requestor's subsequent

clarification after receipt of the information noted that his request also contemplated a summary of the amount of money paid to the Cotton, Bledsoe, Tighe & Dawson Law Firm including a breakdown of the billing by Cotton, Bledsoe, Tighe & Dawson. You have submitted to this office the law firm's detailed billings to the City of Midland for its representation of the city and/or one of its employees, which includes a list of the pending cases, and you contend the billings are excepted from required public disclosure under sections 552.101, 552.103, and/or 552.107 of the Government Code.<sup>1</sup>

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a 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. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

You have met the first prong of the test in showing that the litigation is active. You also assert that requiring a government entity to disclose the amount of money spent in the prosecution or defense of pending litigation, when the opposing party itself cannot be compelled to make a similar disclosure, places the city at a disadvantage in situations such as settlement negotiations, if it is apparent to the opposing party that the governmental entity has made the strategic decision not to continue to aggressively pursue its defense, enforcement or prosecution. After reviewing the active litigation fee bills and your arguments for withholding the information we conclude that you have demonstrated the direct relationship between the information sought and the pending litigation. Open Records Decision Nos. 222 (1979) at 3, 304 (1982) at 2. Therefore, the city may withhold the fee bills in the active litigation under section 552.103.<sup>2</sup>

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

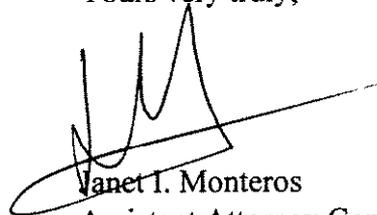
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<sup>1</sup>We note that you have agreed to make available for inspection to the requesting party attorney fee bills for matters which are no longer pending.

<sup>2</sup>As we resolved this matter under section 552.103, we need not address your arguments under section 552.101 and/or 552.107. We note, however, that once all parties to litigation have gained access to the information at issue, through discovery or otherwise, section 552.103(a) is no longer applicable. Open Records Decision Nos. 551 (1990), 454 (1986). Further, once the litigation has concluded, section 552.103(a) is no longer applicable. Open Records Decision No. 350 (1982).

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,



Vanet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/rho

Ref.: ID# 37441

Enclosures: Submitted documents

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