



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 12, 1996

Mr. James T. Jeffrey, Jr.  
Remington & Jeffrey, A P.C.  
1306 W. Abram  
Arlington, Texas 76013-1711

OR96-1646

Dear Mr. Jeffrey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101403.

The City of Pantego (the "city") received a request for two special use applications and related documents. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. You have submitted representative samples of the requested documents.

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).

The city has submitted a petition, which establishes the first prong of section 552.103(a). We have reviewed the submitted sample documents and conclude that they are related to the pending litigation. However, for compelling reasons of public policy, some information cannot be withheld from disclosure regardless of its relationship to litigation. Open Records Decision No. 551 (1990). Section 552.103 cannot be applied to except from disclosure the official records of the public proceedings of a government body. Open Records Decision No. 221 (1979).<sup>1</sup> For your convenience, we have marked the sample documents to indicate what may be withheld under section 552.103(a).

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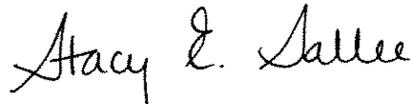
<sup>1</sup> Information that a statute other than chapter 552 expressly makes public is not subject to the chapter 552 exceptions to required public disclosure. Open Records Decision No. 623 (1994) at 3. The minutes, tape-recordings, and agenda of an open meeting are public records. Gov't Code §§ 551.022 (minutes and tape recordings), .041 (notice), .043 (time and accessibility of notice), .045 (emergency addition to agenda).

We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, 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).

In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 101403

Enclosures: Submitted documents

cc: Patsy and Johnny Hill  
2111 1/2 West Arkansas Lane  
Arlington, Texas 76013  
(w/o enclosures)