



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1996

Mr. Edwin M. Snyder
First Assistant City Attorney
P.O. Box 860358
Plano, Texas 75086-0358

OR96-1776

Dear Mr. Snyder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101398.

The City of Plano (the "city") received a request for the probable cause affidavit for the arrest warrant concerning case number 96-C1643. You claim that the requested information is excepted from required public disclosure by section 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and have reviewed the document at issue.

Section 552.103(a) excepts from disclosure 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
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

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

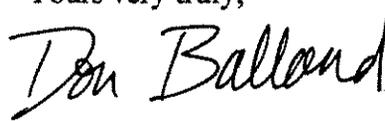
552.103(a).

In this instance, you have demonstrated that the city is involved in pending criminal litigation, case number 96-C1643. After reviewing the submitted materials, we also conclude that the information at issue relates to that litigation. The city has, therefore, shown that section 552.103 is applicable to the requested document.¹

The requestor argues that the affidavit has been filed in a Texas court. You explain, on the other hand, that the record does not appear to be a part of the court's files. If the requested document has been filed with a court, it is a part of the public record and must be released. See *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (orig. proceeding). If, however, the document has not been filed with a court, it is protected from disclosure by section 552.103 of the Government Code. This situation raises a question of fact. This office is unable to resolve questions of fact through the opinion process. Open Records Decision Nos. 554 (1990), 552 (1990). Thus, depending on the circumstances, the city may withhold the affidavit.

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 questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

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¹Generally, however, 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 Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, 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).

You additionally argue that the requested information "relates to a pending criminal litigation matter which is excepted under section 552.101." We do not believe that matters relating to pending criminal litigation are excepted under section 552.101 as such. In this circumstance, the more appropriate stated exception is 552.108 of the Government Code.

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Enclosures: Submitted document

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(w/o enclosures)