



Office of the Attorney General

State of Texas

November 19, 1996

DAN MORALES
ATTORNEY GENERAL

Mr. Robert L. Dillard, III
Nichols, Jackson, Dillard, Hager & Smith
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR96-2146

Dear Mr. Dillard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101880.

The City of Lancaster (the "city"), which you represent, received a request for "any documents in the Atchley case pertaining to the August hearing." You state that you have released a copy of the judgment in that case. You claim, however, that the remaining responsive document is excepted from required public disclosure by sections 552.103 and 552.107 of the Government Code. We have considered the exception you claim and have reviewed the documents 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.

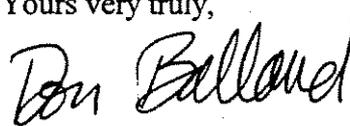
The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related 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).

You have provided this office with the judgment in the case for which you claim the section 552.103 exception, *Atchley v. City of Lancaster*, No. 3:96-CV-0887-X (N. Tex. 1996) (order granting dismissal). The court has dismissed that suit with prejudice. 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). We conclude, therefore, that section 552.103 is inapplicable in this instance. The city may not withhold the requested document under section 552.103.

You also contend that the responsive document is protected from disclosure by section 552.107. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We find that some of the information in the letter reveals the attorney's legal opinion or advice. Some of the document, however, is purely factual. We have marked the information that the city may withhold under section 552.107.

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

Ref: ID# 101880

Enclosures: Submitted documents

cc: Mr. Charles E. Atchley
203 West 4th Street
Lancaster, Texas 75146
(w/o enclosures)