



Office of the Attorney General

State of Texas

December 6, 1996

DAN MORALES
ATTORNEY GENERAL

Mr. Norbert J. Hart
Assistant City Attorney
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR96-2304

Dear Mr. Hart:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102510.

The City of Corpus Christi (the "city") received two requests from the same requestor seeking the expenditures and fees concerning two related civil service arbitrations. You claim that the requested information is excepted from required public disclosure by section 552.103 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).

In this instance, you have provided this office with the pleadings in two pending lawsuits, *Arnal v. Corpus Christi*, No. 95-5591-H (347th Dist. Ct., Nueces County, Tex., Nov. 11, 1995); and *Smith v. Corpus Christi, et al.*, No. 96-246-A (28th Dist. Ct., Nueces County, Tex., Jan. 16, 1996). You state that the plaintiffs in these suits wish to prove that the city terminated the former employees with bad faith. You explain that the requested information may be used in the litigation to show that the city had such bad faith. After reviewing the submitted materials, we conclude that litigation is pending and that the requested documents relate to the pending suits. The city, may therefore, withhold the requested information under section 552.103.

Generally, 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).

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# 102510

Enclosures: Submitted documents

cc: Mr. Pascual Arnal
5749 Crestmore
Corpus Christi, Texas 78415
(w/o enclosures)