



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 16, 1996

Ms. Elizabeth Lutton
Assistant City Attorney
City of Arlington
101 West Abram Street, Box 231
Arlington, Texas 76004-0231

OR96-2409

Dear Ms. Lutton:

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# 102660.

The City of Arlington (the "city") received a request for "all information pertaining to the following positions I have applied for: Residential Inspector, Traffic Safety Supervisor, Senior Inspector, Utilities Service Coordinator during the past 10 months." However, the city seeks to withhold the requested information based on section 552.103 of the Government Code. You enclosed under Exhibit B a copy of "Plaintiff's First Amended Complaint" and under Exhibit C marked representative samples of the information the department seeks to withhold.¹

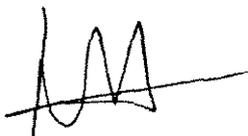
Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable 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

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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

After reviewing the "Plaintiff's First Amended Complaint" filed in *Robert Gonzalez, Roy Castro, Ramon Rodriguez v. City of Arlington*, Civil Action No. 4-96-CV-072E (D.N.D.) and other submitted documents, we conclude that the requested documents are related to the litigation. Therefore, the city may withhold the requested documents under section 552.103. 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).

We are resolving this matter with this 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 may 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,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID# 102660

Enclosures: Submitted documents

cc: Mr. Roy Castro
2462 Denbury Drive
Fort Worth, Texas 76133
(w/o enclosures)