



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 28, 1997

Mr. Larry W. Schenk
City Attorney
P.O. Box 1952
Longview, Texas 75606-1952

OR97-0960

Dear Mr. Schenk:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 105516.

The City of Longview (the "city") received two requests concerning the amount the city has paid a certain law firm for legal representation concerning Pilgrim's Pride's permit application before the Texas Natural Resource Conservation Commission. You contend 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 explain that the city is currently involved in a matter before the State Office of Administrative Hearings concerning Pilgrim's Pride's permit application. SOAH No. 582-96-0246 (January 21, 1997). You also explain that the award of attorney's fees is currently a disputed matter in the case. You have provided this office with copies of several motions in the case to verify your contention. You have demonstrated that litigation is pending. Open Records Decision No. 588 (1991) (contested cases conducted under Administrative Procedure Act are considered litigation under section 552.103). After reviewing the submitted materials, we also find that the requested information relates to the litigation. You may, therefore, withhold the requested information pursuant to section 52.103.

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 have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 105516

Enclosures: Submitted documents

cc: Mr. Bill Bankston
P.O. Box 2867
Longview, Texas 75606
(w/o enclosures)