



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 14, 1997

Mr. Lewis R. Sifford
Sifford & Anderson, L.L.P.
6300 NationsBank Plaza
901 Main Street
Dallas, Texas 75202

OR97-1095

Dear Mr. Sifford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 35396.

The City of Cedar Hill (the "city"), which you represent, received a request for certified copies of the minutes of several city council meetings and a certified copy of the geotechnical engineering study (the "study") of a collapsed roadway. You state that the city has released the minutes to the requestor. As for the study, you contend that it is excepted from disclosure under Rule 166b(3) of the Texas Rules of Civil Procedure as the work product of an expert.

Initially we note that chapter 552 of the Government Code differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. Attorney General Opinion JM-1048 (1989); *see* Open Records Decision No. 575 (1990) (section 552.101 does not encompass discovery privileges); Gov't Code § 552.006 (chapter 552 does not authorize withholding public information or limit availability of public information to public except as expressly provided by chapter 552). Therefore, we do not address your arguments under Rule 166b(3) of the Texas Rules of Civil Procedure.

You state that the city hired a consultant to prepare the study "in anticipation of litigation." You have also submitted the following documentation to this office: 1) the plaintiffs' petition from a suit filed against the city in which the owners of land adjacent to the collapsed roadway allege damage to their property; and 2) the draft of a petition that the city intends to file in connection with an action against the design engineers and construction contractors who constructed the collapsed roadway. Based on your submissions, we assume that your intent is to invoke section 552.103 of the Government Code to except the study from disclosure.

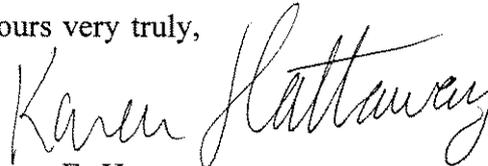
Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing

relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show 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. You have demonstrated that the study relates to both anticipated and pending litigation. Therefore, if the litigation has not concluded, the city may withhold the study from disclosure under section 552.103(a).

We note, however, that if the opposing parties in the litigation have seen or had access to the study, through discovery or otherwise, there is no justification for withholding the study from disclosure 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 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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 35396

Enclosures: Submitted documents

cc: Mr. Robert L. Guinn
710 Rose Hill Ln.
Cedar Hill, Texas 75104
(w/o enclosures)