



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 11, 1997

Mr. Terrence S. Welch  
Vial, Hamilton, Koch & Knox, L.L.P.  
1717 Main Street, Suite 4400  
Dallas, Texas 75201-7388

OR97-2031

Dear Mr. Welch:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 108677.

The Town of Flower Mound (the "town"), which you represent, received several requests for information pertaining to the former town manager and all records documenting any business dealings between the town and the firm of Parker-Jones. Although you do not object to the release of some of the requested information, you claim that the remaining information is excepted from required public disclosure under sections 552.101 and 552.103 of the Government Code. We have considered your arguments and reviewed the submitted information.

First, you inform us that one of the requestors has modified his Parker-Jones records request to only those records relating to the former town manager. However, you have submitted Parker-Jones records relating to persons other than the former town manager. These records are no longer responsive to the request for information. You further inform us that there are no records responsive to this modified request. The Open Records Act does not require a governmental body to make available information which does not exist at the time of the request. Open Records Decision No. 362 (1983). Therefore, the town need not comply with the request for information that did not exist at the time of the request.

Second, to be excepted under section 552.103, the town must demonstrate 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 claim that the requested information is related to three pending lawsuits. In one of these lawsuits, *Estrello v. Flower Mound, et.al.*, No. 4:96-CV-276 (E.D. Tex.), the former town manager is a named defendant. You have submitted copies of the petitions in the pending litigation and demonstrated that the requested information relates to the pending litigation. Thus, you may withhold the requested information pursuant to section 552.103.

In reaching this conclusion, however, we assume that the opposing parties to the litigation have not had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that section 552.103(a) no longer applies once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). We caution, however, that some of the information may be confidential by law or may implicate the proprietary interest of a third party. Therefore, if the town receives a request in the future, at a time when litigation is no longer reasonably anticipated or pending, the town should seek a ruling from this office before releasing some of the requested information. *See* Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/rho

Ref.: ID# 108677

Enclosures: Submitted documents

cc: Mr. Eric Sipos  
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