



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 9, 1997

Ms. Kate Herrington  
Open Records Coordinator  
Texas Department of Mental Health  
and Mental Retardation  
P.O. Box 12668  
Austin, Texas 78711-2668

OR97-2251

Dear Ms. Herrington:

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# 110469.

The Texas Department of Mental Health and Mental Retardation received four related open records requests for certain records that you contend may be withheld from the public pursuant to section 552.103(a) of the Government Code. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103. The requested records may therefore be withheld under this exception.<sup>1</sup>

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now

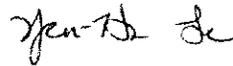
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<sup>1</sup>Because we resolve your request under section 552.103, we need not address the applicability of the other exceptions you raised.

withholding that information from the requestor pursuant to section 552.103. We also note that the applicability of section 552.103 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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/RWP/rho

Ref: ID# 110469

Enclosures: Submitted documents