



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 24, 1997

Ms. Mary Barrow Nichols
General Counsel
Legal Department
Texas Workers' Compensation
Insurance Fund
221 W. 6th Street, Suite 300
Austin, Texas 78701

OR97-2581

Dear Ms. Nichols:

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# 110879.

The Texas Workers' Compensation Insurance Fund (the "fund") received requests for a specific letter and a summary of payments made by the fund to an insurance company. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a) applies to 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 governmental body 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 fund must meet both prongs of this test for information to be excepted under section 552.103(a).

In this instance, the Bexar County District Attorney (the "district attorney") has advised this office that the records at issue relate to a criminal matter currently being prosecuted by the district attorney and requests that the records be withheld from disclosure under section 552.103. Therefore, we conclude that the fund may withhold the requested information under section 552.103(a), as the requested information relates to pending litigation. *See* Open Records Decision No. 141 (1976) at 2 (district attorney's determination that requested records relate to possible criminal litigation and should be withheld from public inspection properly invokes applicability of section 3(a)(3)) (construing predecessor statute).

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 anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. 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 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,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/alg

Ref.: ID# 110879

Enclosures: Submitted documents

cc: Ms. Mona Mireles
Border Maintenance Service, Inc.
6326 Sovereign, Suite 140
San Antonio, Texas 78229
(w/o enclosures)