



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 17, 1998

Mr. Ron M. Pigott  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR98-1696

Dear Mr. Pigott:

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# 117040.

The Texas Department of Public Safety (the "department") received a request for "a copy of the final report of an investigation conducted by the Texas Rangers into an allegation of sexual harassment" by a Longview police officer. You assert that because the City of Longview (the "city") is currently involved in two pending lawsuits to which the requested information relates, 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.

Initially, we note that section 552.103 applies only where the litigation involves or is expected to involve the governmental body which is claiming the exception. Open Records Decision Nos. 392 (1983) (construing statutory predecessor), 132 (1976) (same). Thus, the department may not rely on section 552.103 as it is the city and not the department that is involved in the litigation. However, in this instance, it appears that the department is maintaining the requested information for the city. The department conducted the investigation at the request of the city, and the city received a copy of the investigation report. Hence, the department prepared the information at the request of the city, collected and maintained the information for the city in its transaction of official business, and the city has a right of access to the information. Gov't Code § 552.002. As the department is acting on behalf of the city in this instance, the department may raise section 552.103 in the city's behalf.

To show that section 552.103 is applicable, the governmental body 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.

Section 552.103 requires concrete evidence that litigation may ensue. Open Records Decision No. 452 (1986) at 4.

You inform us that the city is currently involved in two pending lawsuits involving the basis of the investigation report. You have also submitted a letter from the city which asks the department to assert section 552.103 in order to withhold the requested information from public disclosure. We conclude that the requested information relates to pending litigation. Therefore, you may withhold the requested information pursuant to section 552.103.

We note, however, that generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103 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, and it must be disclosed. Moreover, 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 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/ch

Ref.: ID# 117040

Enclosures: Submitted documents

cc: Ms. Jo Lee Hammer  
Longview News-Journal  
P.O. Box 1792  
Longview, Texas 75606  
(w/o enclosures)