



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 1, 1998

Mr. John Steiner  
Division Chief  
City of Austin  
Law Department  
P.O. Box 1088  
Austin, Texas 78767-1088

OR98-2079

Dear Mr. Steiner:

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# 117690.

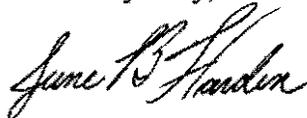
The City of Austin (the "city") received a request for information related to the Barton Springs Salamander and the cleaning of Barton Springs Pool. You assert that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the submitted documents.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the governing body is or may be a party. The governing 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 at 4 (1990). The governing body must meet both prongs of this test for information to be excepted under section 552.103(a). You have submitted documents showing that the city is currently involved in litigation stemming from its alleged failure to protect the Barton Springs Salamander. We note, however, that this litigation may have ended. *Hamilton v. City of Austin*, No. A 98 CA 317 SS, 1998 WL 347146 (W.D. Tex., June 16, 1998). 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). Therefore, if

litigation has concluded, the city must release the requested information. If litigation is still pending, the city may withhold the requested information under section 552.103.<sup>1</sup>

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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref.: ID# 117690

Enclosures: Submitted documents

cc: Mr. Robert Brandes  
P.O. Box 5808  
Austin, Texas 78763  
(w/o enclosures)

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<sup>1</sup>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).