



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 14, 1998

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

OR98-3083

Dear Mr. Crull:

You ask that we reconsider our decision in Open Records Letter No. 98-2266 (1998). Your request was assigned ID# 120442.

Open Records Letter No. 98-2266, which concerned a request for records relating to the death of William Euell Poyner, determined that the Texas Department of Public Safety ("DPS") may not withhold the requested information from the requestor based on section 552.103 of the Government Code. DPS had urged the applicability of section 552.103 because DPS maintained that the requested information related to a pending lawsuit. *Poyner v. County of Eastland*, No. 37383 (91<sup>st</sup> Dist. Ct., Harris County, Tex., filed July 8, 1998). This office found section 552.103 inapplicable because DPS is not a party to the pending lawsuit.

You now urge that the legislature intended section 552.103 to apply in this case. You state:

By allowing a party to obtain records from one governmental entity that it would not be entitled to obtain from either the County of Eastland or the City of Gorman, your decision would essentially allow a litigant to "end run" the protection the Legislature intended to afford the State and its political subdivisions when it included this exemption in the Open Records Act. Such an interpretation of this exemption will inevitably result in numerous records having to be released under the provisions of the Open Records Act and not under civil disclosure, to the severe detriment of governmental entities throughout the state.

This office's long-standing interpretation of section 552.103 or its predecessor, V.T.C.S. article 6252-17a, section 3(a)(3), has been that the exception is applicable only where the litigation involves or is expected to involve the governmental body claiming the exception. Open Records Decision Nos. 575 (1990), 392 (1983), 132 (1976), 7 (1973); *but see* Open Record Decision Nos. 469 (1987), 121 (1976) (district attorney's criminal litigation interests may be asserted by another governmental body in certain circumstances). The legislature has made no attempt to alter this interpretation. *See Reed v. State Dept. of Licensing and Regulation*, 820 S.W.2d 1,4 (Tex. App.--Austin 1991, no writ) (court entitled to assume legislative approval of administrative agency's statutory interpretation by legislature's failure to amend statute). Thus, we do not agree that the legislature intended section 552.103 to apply to the requested information. We therefore affirm Open Records Letter No. 98-2266.

We are resolving this matter with this 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 may 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,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/ch

Ref.: ID# 120442

Enclosures: Submitted documents

cc: Mr. Richard Coan  
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(w/o enclosures)