



March 5, 1999

Mr. Larry W. Schenk
City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606-1952

OR99-0624

Dear Mr. Schenk:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122662.

The City of Longview (the "city") received a request for various information relating to the city's water and sewer utilities. You advise that the information responsive to parts 1, 2 and 3 of the request "consists primarily of public audits and official budgets of the City of Longview, as well as the City's official statement for a bond issue" and that this material will be made available to the requestor. You seek to withhold other information responsive to the request under section 552.103 of the Government Code. You have submitted a "representative sample" of the information you seek to withhold.¹

Section 552.103(a) excepts from required public disclosure 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

¹In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

In your December 9, 1999, letter asking for a decision from this office, you advised that the city anticipated litigation with the entity the requestor's law firm represents, Tryon Road Water Supply Corporation. We have since been provided with a petition filed by such entity bringing a proceeding against the city before the Texas Natural Resource Conservation Commission. Having reviewed the submitted information, we conclude that it relates to said proceeding and that the city may therefore withhold the submitted information at this time under section 552.103(a). *See* Open Records Decision No. 588 (1991) (contested proceedings before administrative agency constitute "litigation" for purposes of litigation exception in predecessor statute).

We assume, however, that none of the information in the records at issue has previously been made available to the opposing party in the litigation. Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). To the extent the opposing party has seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a). Similarly, section 552.103(a) does not authorize the city to withhold materials which have already been made available to the public. Open Records Decision No. 436 (1986). The applicability of section 552.103(a) ends once the litigation has 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.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMWch

Ref: ID# 122662.

Enclosures: Submitted documents

cc: Ms. J. Kay Trostle
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(w/o enclosures)