



June 3, 1999

Mr. Jose Rodriguez
County Attorney
El Paso County
500 E. San Antonio, Room 203
El Paso, Texas 79901

OR99-1543

Dear Mr. Rodriguez:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124614.

El Paso County (the "county") received a request for information concerning the cost of the prosecution of three pending bond forfeiture cases. You assert that the county does not have some of the categories of requested records, and that the responsive records it does have are protected from disclosure under section 552.103 of the Government Code. While the county has an obligation to make a good faith effort to locate requested records, Open Records Decision No. 561 at 8 (1990), it is not obligated to provide information that does not exist. Open Records Decision Nos. 561 at 9 (1990) (governmental body does not have to obtain new information), 362 at 2 (1983) (governmental body does not have to supply information which does not exist). We will address the submitted records for which you assert section 552.103(a) protection.

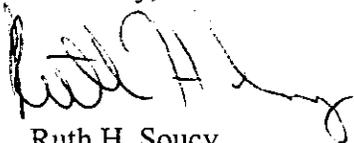
To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.), *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). You have shown that litigation is pending. Because of the subject matter of the underlying litigation, we agree that the submitted payment and cost information about the litigation is related to the litigation.

We note, however, that certain types of information may not be withheld from disclosure under section 552.103(a). Information that has been made publicly available may not be withheld from disclosure under section 552.103(a), including information disclosed during a public meeting. Gov't Code § 552.007; Open Records Decision No. 221 at 1 (1979). Section 552.103(a) also is inapplicable to records to which the opposing party has had access, because no section 552.103(a) interest generally exists with respect to information that has been obtained by all parties to the litigation. Open Records Decision Nos. 349 (1982), 320 (1982).

Thus, if the information at issue was disclosed during a public meeting or has been provided to the opposing party, it may not now be withheld from disclosure under section 552.103(a). Further, documents filed with a court are generally public and must be released. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). The documents may otherwise be withheld from disclosure under section 552.103(a). We note that 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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 124614

Encl. Submitted documents

cc: Mr. Raymond Telles
1127 E. San Antonio
El Paso, Texas 79901
(w/o enclosures)