OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

July 26, 1999

Ms. Jennifer Gilchrist
General Counsel
Texas Association of Counties
P.O. Box 2131
Austin, Texas 78768-2131

OR99-2091

Dear Ms. Gilchrist:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 125984.

The Texas Association of Counties (the "association"), which you represent, received an open records request for "a copy of the work papers that precipitated the increase in the insurance rate of the county, especially those that reflect the county jail." In response to the request, you submit to this office for review the information at issue. You represent that some of the requested "work papers will be forwarded to" the requestor. However, you claim that the submitted marked records are excepted from required public disclosure pursuant to section 552.103 of the Government Code. We have considered the exception and arguments you raise, and have reviewed the information submitted.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The association 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. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (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). The association must meet both prongs of this test for information to be excepted under section 552.103(a).

Along with the responsive information you have submitted several letters, from attorneys representing county entities or officials, asserting that "[d]isclosure of the amount of any reserve or expenses would jeopardize our ability to successfully settle or fully litigate," claims with respect to referenced cases. Based on the facts presented and the information

at issue, we conclude that the Association has not adequately demonstrated the relatedness of the requested information to anticipated or pending litigation. Therefore, the submitted records may not be withheld under section 552.103(a).

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.

Sincerely,

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 125984

Encl.: Marked documents

cc: Mr. Rick Donaldson
305 North King Road
Royse City, Texas 75189
(w/o enclosures)