



September 27, 1999

Ms. Magdalena L. DeSalme  
Assistant Criminal District Attorney  
Bexar County  
300 Dolorosa, Suite 4049-Civil Section  
San Antonio, Texas 78205-3030

OR99-2705

Dear Ms. DeSalme:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128001.

The Bexar County Sheriff received a request for information related to medical services, staffing, and other matters concerning the Bexar County Sheriff's Office and Jail. You seek to withhold the requested information, of which you have provided a representative sample<sup>1</sup>, under section 552.103 of the Government Code.

Section 552.103(a) of the Government Code, known as the litigation exception, 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

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

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the

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<sup>1</sup>In 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.

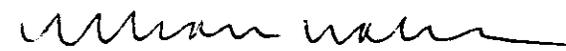
governmental body is a party. Open Records Decision No. 588 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You have provided a notice of claim sent to the Sheriff's Office by the requestor. In our opinion, the notice establishes that the sheriff's office may reasonably anticipate litigation. Having reviewed the notice and the information at issue, we also conclude that the requested information relates to the anticipated litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.). Therefore, you may generally withhold the requested information under section 552.103(a).

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 (1982), 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 withholding 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

WMW/ch

Ref: ID# 128001

Encl. Submitted documents

cc: Mr. Robert Hogan  
Law Offices of William T. Wilson  
P.O. box 427  
Temple, Texas 76508  
(w/o enclosures)