



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 15, 2010

Mr. Warren M. S. Ernst  
Chief of the General Counsel Division  
Office of the City Attorney  
City of Dallas  
1500 Marilla Street, Room 7BN  
Dallas, Texas 75201

OR2010-17285

Dear Mr. Ernst:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 400172 (Request # 10-00667155).

The City of Dallas (the "city") received a request for statements taken from three named individuals. You claim the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.<sup>1</sup>

Section 552.103 of the Government Code, the "litigation exception," provides in part:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature 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.

---

<sup>1</sup>This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code §.552.103(a), (c). A governmental body has the burden of providing relevant facts and documentation sufficient to establish the applicability of section 552.103 to the information at issue. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

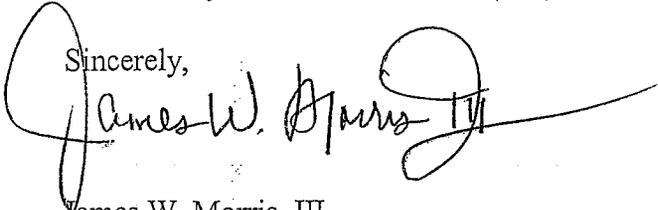
You state the submitted information is related to a pending lawsuit in the United States District Court for the North District of Texas styled *Leroy White et al. v. City of Dallas*, Case No. 09-CV-2395-F. You have provided pleadings demonstrating the city was a party to the lawsuit when the instant request for information was received. Based on your representations, the submitted pleadings, and our review of the information at issue, we find the submitted information is related to litigation to which the city was a party when it received the instant request for information. We therefore conclude the city may withhold the submitted information under section 552.103 of the Government Code.

In reaching this conclusion, we assume the opposing parties in the pending litigation have not seen or had access to any of the information at issue. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See Open Records Decision No. 551 at 4-5 (1990).* If the opposing parties have seen or had access to information relating to litigation through discovery or otherwise, then there is no interest in withholding such information from public disclosure under section 552.103. *See Open Records Decision Nos. 349 (1982), 320 (1982).* We also note the applicability of section 552.103 ends once the related litigation concludes. *See Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).*

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris III", with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 400172

Enc: Submitted documents

c: Requestor  
(w/o enclosures)