



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 18, 1994

Ms. Camille K. Walker
Senior Staff Attorney
Texas Workers' Compensation Insurance Facility
1301 Capitol of Texas Highway South, B-320
Austin, Texas 78746

OR94-445

Dear Ms. Walker:

The Texas Workers' Compensation Insurance Facility (the "facility") received a request for documents concerning Raywood Well Service. The facility has asked if this information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 25375.

The facility contends that the information is excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *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 (1990) at 4. The facility has met its burden of showing that litigation is pending, by providing documents showing that the facility has filed suit against Raywood Well Service. The facility has also submitted to this office for review information responsive to the request. The submitted information is related to the litigation. Since the facility has met its burden of showing that section 552.103(a) is applicable, the documents at issue may be withheld from disclosure.¹

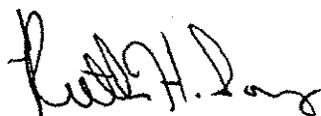
In reaching this conclusion, we assume that the opposing party to the litigation has not previously had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or

¹Because these documents may be withheld from disclosure under section 552.103(a), we do not need at this time to consider your argument that the documents are excepted from disclosure under section 552.107.

otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). The applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the city's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 25375

Enclosures: Submitted documents

cc: Mr. Paul Holland
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(w/o enclosures)

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