



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 29, 1995

Mr. Jay H. Granberry
Deputy City Attorney I
City of Bryan
Legal Department
P.O. Box 1000
Bryan, Texas 77805

OR95-307

Dear Mr. Granberry:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33342.

The City of Bryan (the "city") received an open records request for information concerning a particular street and stop sign in the city. You have submitted to this office for review responsive records that you contend may be withheld from the public pursuant to section 552.103(a) of the Government Code. Section 552.103(a) applies to 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.

Section 552.103(a) excepts from public disclosure information which relates to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party. Section 552.103(a) was intended to prevent the use of the act as a method of avoiding the rules of discovery used in litigation. Attorney General Opinion JM-1048

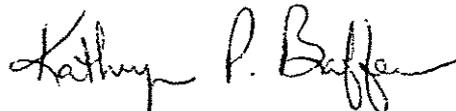
(1989) at 4. For information to be excepted from public disclosure under section 552.103(a), litigation must be pending or reasonably anticipated and the information must relate to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Whether litigation is anticipated is determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. Section 552.103 requires concrete evidence that litigation is realistically contemplated; it must be more than mere conjecture. Attorney General Opinion JM-266 (1984) at 4; Open Records Decision Nos. 518 (1989), 328 (1982). Once the governmental body has shown that litigation is pending or anticipated, the governmental body must then explain how the information requested is related to the subject of the litigation. Open Records Decision Nos. 588 (1991), 551 (1990) at 5.

You state that the requestor received a citation from a city police officer for failure to stop at a stop sign, a class C misdemeanor. You state that a pretrial hearing is set for May 10, 1995, and a jury trial is set for May 30, 1995. We conclude that, in this instance, you have made the requisite showing that the requested information relates to litigation for purposes of section 552.103(a).¹ The requested records may therefore be withheld while litigation is pending.

We note that 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). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with this 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 may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Government Section

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¹You state that as the prosecutor in the suit against the requestor for failing to stop at a stop sign you have determined that the requested information should be withheld from public inspection. We assume from your letter that the street and stop sign at issue in the lawsuit against the requestor are the same as those addressed in the information you seek to withhold from the requestor.

Ref.: ID# 33342

Enclosures: Submitted documents

cc: Mr. Karl E. Black
Sexton and Black
710 Park Place
College Station, Texas 77840
(w/o enclosures)