



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 8, 1995

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Comptroller of Public Accounts
LBJ State Office Building
P.O. Box 13528
Austin, Texas 78711-3528

OR95-354

Dear Ms. Joseph:

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# 28786.

The Comptroller of Public Accounts ("comptroller") received an open records request for certain audit and investigative records concerning a business called Texas Tax Recovery. You contend the Comptroller may withhold the requested information from the public pursuant to sections 552.101, 552.103, 552.108, and 552.111 of the Government Code.¹

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

¹You also say that the comptroller has no records that are responsive to some of the requested information, in particular item nos. 1, 2, 3, 4, 6, 7, and 12.

(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 requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). You assert that the requested information relates to reasonably anticipated litigation. You inform us that the comptroller's office has investigated Texas Tax Recovery for possible criminal violations and has referred this investigation to the Travis County District Attorney for further investigation. Assistant District Attorney Gail Van Winkle advises that the requested information is evidence in the ongoing investigation and requests that the information be withheld.

Information that relates to a district attorney's criminal investigation may be excepted from required public disclosure under section 552.103. See Open Records Decision Nos. 469 (1987), 289 (1981), 141(1976). Thus, you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). We conclude, therefore, that the comptroller may withhold the requested records.² We note that 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 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 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,



Kay H. Guajardo
Assistant Attorney General
Open Government Section

²In reaching this conclusion, however, we assume that the opposing party to the anticipated 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 otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). 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).

KHG/LRD/rho

Ref.: ID# 28786

cc: Mr. Stewart A. Feldman
Stewart A. Feldman & Associates
Three Riverway, Suite 1960
Houston, Texas 77056-1910