



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 14, 1995

Ms. Bonnie Lee Goldstein
Vial, Hamilton, Koch & Knox, L.L.P.
1717 Main Street
Dallas, Texas 75201-4605

OR95-760

Dear Ms. Goldstein:

You have asked 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# 32772.

The City of Flower Mound (the "city") received an open records request for all correspondence and notes concerning property at 3920 Pocohantas.¹ You contend that the requested 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.

From the information you have provided, it appears that litigation concerning the property is pending. Our review of the records at issue shows that they are related to the pending litigation. The city has met its burden of showing the applicability of section 552.103(a).²

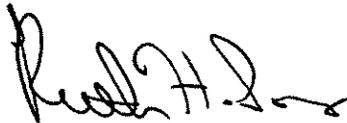
¹The requestor asked for information dating from 1981 to the date of the request. You indicate that the city, in accordance with its record retention policies, maintains records only from 1992 to the present. The city is not required to provide information which is not in its possession. Open Records Decision No. 452 (1986) at 3 (open records request applies to information in existence when request is received).

²Because the records may be withheld from disclosure under section 552.103(a), we do not need to address your other arguments against disclosure.

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, such as through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the opposing party in the anticipated litigation has 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 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.

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID #32772

Enclosures: Submitted documents

cc: Ms. Jeanne Willett Dunagan
909 Hillside Lane
Flower Mound, Texas 75028
(w/o enclosures)