



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1995

Mr. Jean E. Shotts, Jr.
Trial Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR95-783

Dear Mr. Shotts:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act. Your request was assigned ID# 30556.

The City of Lubbock (the "city") received a request for certain documents relating to wire transfers in the amount of \$750,000 to Lubbock State Bank. The city has claimed that section 552.103 of the Government Code excepts this information from disclosure. We have considered this exception and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure 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.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue relates 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

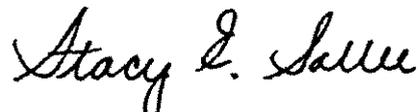
Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under 552.103(a). See Open Records Decision No. 511 (1988) at 3 (review of litigation exception by attorney general).

Some of the documents that the city has submitted for review are resolutions passed by the Lubbock City Council, and attachments to those resolutions. This office has previously held: "It is clear that official records of the public proceedings of a governmental body are among the most open of records" Open Records Decision No. 221 (1979) at 1. Section 552.103(a) does not except this type of information from disclosure. *Id.* Therefore, the resolutions and their attachments must be released.

However, we believe that the city has shown the applicability of section 552.103(a) as to the remaining documents.¹ Accordingly, the city may withhold these documents under section 552.103(a). We note that the applicability of section 552.103(a) ends if the other parties to the litigation obtain the information or when the litigation is concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2. We note also that the section 552.103(a) exception is discretionary with the governmental entity asserting the exception. Open Records Decision No. 542 (1992) at 4. The city may therefore choose to release the information. Gov't Code § 552.007.

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,



Stacy E. Sallee
Assistant Attorney General
Open Government Section

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¹Section 552.022 of the Government Code provides: "Without limiting the meaning of other sections of this chapter, the following categories of information are public information: . . . (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body, if the information is not otherwise made confidential by law." The remaining documents all relate "to the receipt or expenditure of public or other funds by a governmental body." However, this office has previously held that the list of documents in section 552.022 is illustrative and does not limit the applicability of the exceptions to disclosure set out in the Government Code. Open Records Decision No. 551 (1990) at 3.

Ref.: ID# 30556

Enclosures: Submitted documents

cc: Ms. Nora Richardson
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(w/o enclosures)