



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 29, 1995

Mr. John Steiner
Division Chief
City of Austin
Law Department
P.O. Box 1088
Austin, Texas 78767-1088

OR95-1298

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act ("the act"), chapter 552 of the Government Code. The request was assigned ID# 36769.

The City of Austin ("the city") recently received an open records request for the following information:

[A]ny and all documentation pertaining to all evacuations performed in and around the tankfarm area and the surrounding neighborhood.

The city contends that the requested information may be withheld from public disclosure pursuant to section 552.103 of the Government Code and has submitted documents responsive to this request to this office for our review. The city further alleges that the information sought relates to Cause No. 92-04889; *Gutierrez, et al. v. Mobil Oil Corp., et al.*; In the 53rd Judicial District Court of Travis County, Texas, in which cause the city is a defendant and cross-claimant.

Section 552.103(a) excepts from required public disclosure information relating to litigation "to which the state or a political subdivision. . . is or may be a party." 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). In this instance, you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). The requested records may therefore be withheld.

In reaching this conclusion, however, we assume that the opposing parties to this litigation have not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, for example, 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 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).¹

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,



Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 36769

Enclosures: Submitted documents

cc: Mr. John A. Medrano
Mullen, MacInnes & Redding, Ltd.
812 San Antonio, 6th Floor
Austin, Texas 78701
(w/o enclosures)

¹We note also that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).