



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 25, 1996

Ms. Sammie K. Glasco  
Assistant General Counsel  
Texas Department of Banking  
2601 North Lamar Boulevard  
Austin, Texas 78705-4294

OR96-2239

Dear Ms. Glasco:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 102515.

The Texas Department of Banking (the "department") received a request for several items of information about the Waco Memorial Park. You say the department will release to the requestor items 1, 4, 6, 7, and 8. You assert that items 2, 3, and 5 are excepted from required public disclosure based on section 552.101, 552.103 and 552.108 of the Government Code.

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution. Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). If an investigation by an administrative agency reveals possible criminal conduct that the agency intends to report to the appropriate law enforcement agency, section 552.108 will apply to the information gathered by the administrative agency. *See* Attorney General Opinion MW-575 (1982). Some of the information at issue pertains to the department's investigation of crime, specifically possible violations of Health and Safety Code section 711.052, and V.T.C.S. article 548b, section 3. The department may withhold that information from the requestor pursuant to section 552.108.

Section 552.103(a) of the Government Code reads as follows:

(A) Information is excepted from [required public disclosure] if it is 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.

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. 588 (1991).<sup>1</sup> The department may withhold the information that pertains to possible violations of the Texas Deceptive Trade Practices-Consumer Protection Act, Subchapter E of chapter 17 of the Business and Commerce Code, pursuant to section 552.103. The department must release the remaining information as it appears to be information that the department has stated it will release to the requestor.

In light of our conclusions based on sections 552.108 and 552.103, we need not address your section 552.101 claim at this time. 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 102515

Enclosures: Submitted documents

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<sup>1</sup>If the opposing party in the 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). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

cc: Mr. Charles L. Levy  
Mill Creek Plaza  
8416 Old McGregor Road  
Waco, Texas 76712  
(w/o enclosures)