



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 17, 1997

Mr. Richard Evans  
Texas Municipal League  
Intergovernmental Risk Pool  
P.O. Box 149194  
Austin, Texas 78714-9194

OR97-0863

Dear Mr. Evans:

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# 104953.

The Texas Municipal League Intergovernmental Risk Pool (the "TML") received a request for the attorney fee bills submitted by Roerig, Oliveira & Fisher who represent a member of the TML. However, TML seeks to withhold portions of the requested information based on sections 552.103, 552.107, and 552.111 of the Government Code. You enclose a copy of a court-filed petition. We have reviewed your arguments and submissions.

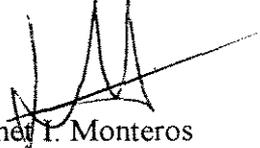
Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The TML has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue 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. The TML must meet both prongs of this test for information to be excepted under section 552.103(a).

You have met the first prong of the test in showing that the litigation is active through the submission of a petition styled as *South Bay Links at Port Isabel, Inc, F/K/A South Padre Island Golf and Links-Port Isabel, Inc. v. Cameron County Fresh Water Supply District No. 1, N/K/A Laguna Madre Water District, et al.*, Cause No. 95-08-3671 (138th Dist. Ct., Cameron County, Tex., June 20, 1996). You assert that requiring a government entity to disclose the legal billings will result in the plaintiffs "learning the defense strategy, defense focus, and counsel's plans regarding progression and resolution of the case." You go on to

argue that the billings contain attorney advice, recommendations and opinions, in that the bills reflect areas of meeting discussion, legal issues briefed, and results of document analysis. After reviewing the active litigation fee bills and your arguments for withholding the information, we conclude that you have demonstrated the direct relationship between the information sought and the pending litigation. Open Records Decision Nos. 304 (1982) at 2, 222 (1979) at 3. Therefore, the TML may withhold the fee bills in the active litigation under section 552.103.<sup>1</sup>

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,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/glg

Ref.: ID# 104953

Enclosures: Petition and submitted documents

cc: Mr. Winston S. Morris, Jr.  
Taylor's Corner  
P.O. Box 225  
Washington, Kentucky 41096  
(w/o enclosures)

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<sup>1</sup>As we resolve this matter under section 552.103, we need not address your arguments under sections 552.107 and 552.111. We note, however, that once all parties to litigation have gained access to the information at issue, through discovery or otherwise, section 552.103(a) is no longer applicable. Open Records Decision Nos. 551 (1990), 454 (1986). Further, once the litigation has concluded, section 552.103(a) is no longer applicable. Open Records Decision No. 350 (1982).