



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 15, 1997

Mr. Stephen A. Smith  
Assistant County Attorney  
Harris County  
1001 Preston, Suite 634  
Houston, Texas 77002-1891

OR97-1602

Dear Mr. Smith:

On behalf of Harris County (the "county"), 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# 107237.

The Harris Assistant County Attorney as attorney in charge for defendants Harris County District Attorneys was served a "Plaintiff's Notice of Depositions" in the styled cause, *Patsy and Noel Bolander vs. The State of Texas, The Texas Comptroller of Public Accounts, et al*, Cause No. 96-45977 (Dist. Ct. of Harris County, 215th Judicial Dist. of Texas, April 21, 1997) in which material subject to a subpoena duces tecum was also requested pursuant to the Open Records Act. You submit a copy of the information and a copy of a court filed petition you assert as relevant in the instant matter. You contend that the requested information is excepted from public disclosure by section 552.103 of the Government Code.

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.

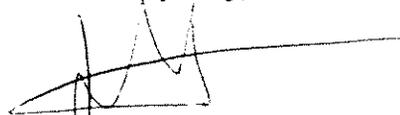
To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

You raise section 552.103 because you assert that the requested information relates directly to pending litigation filed by the requestor. You also enclose a copy of the relevant petition. You have established the first prong of the litigation exception, that litigation is pending. However, once a governmental body has shown that litigation is pending or reasonably anticipated, it must then establish the second prong, that the information relates to the litigation. *See* Open Records Decision No. 638 (1996) at 4. To meet the second prong of the section 552.103 exception, a governmental body must explain how the requested information relates to the subject of the litigation.

You have demonstrated how the requested information relates to the pending litigation, consequently we conclude that the county may withhold the requested information from the requestor based on section 552.103. However, we do note that you must still comply with the applicable provisions pertinent to the rules of civil procedure in responding to the notice of depositions and attached subpoena duces tecum. We additionally observe that the Open Records Act was not intended to provide parties to litigation any earlier or greater access to information than was already available through discovery. Open Records Decision No. 551 (1990).<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

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<sup>1</sup>However, a court-filed document is generally considered public. *See Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992).

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JIM/alg

Ref.: ID# 107237

Enclosures: Submitted documents

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(w/o enclosures)

