



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 26, 1998

Mr. Michael G. Young  
Office of General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR98-0255

Dear Mr. Young:

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# 112523.

The Texas Department of Health (the "department") received an open records request for certain records that you contend may be withheld from the public pursuant to section 552.103 of the Government Code.<sup>1</sup> Specifically, the requestor seeks the following categories of information pertaining to a contract dispute between the department and Ross Laboratories:

- (a) all correspondence among Ross, [the department] and USDA pertaining to [the dispute];
- (b) all audit reports or other financial information which Ross submitted to [the department] and/or USDA pertaining to [the dispute]; and
- (c) all audit reports or other financial information pertaining to Ross which were compiled by or for (1) [the department], (2) any other agency or investigative unit in the state government, (3) USDA, or (4) any other Federal agency or investigative unit, such as the General Accounting Office.

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<sup>1</sup>Because we resolve your request under section 552.103, we need not address the applicability of the other exception you raise, section 552.107(1) of the Government Code.

We note at the outset that the only documents you have submitted to this office as responsive to the request are 1) intra-office memoranda and 2) correspondence between the department, the Office of the Attorney General, and representatives of Ross Laboratories. We assume that the department has released to the requestor the remaining requested documents to the extent they are held by the department. This open records letter does not reach, and therefore does not authorize the withholding of, any of the other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. In this instance, you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103. The requested records may therefore be withheld, with the following exception.<sup>2</sup>

Absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Consequently, 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. Accordingly, all correspondence between Ross Laboratories or its attorneys and either the department or the Office of the Attorney General must be released to the requestor.

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 should 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 Hastings  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

KHH/RWP/rho

Ref: ID# 112523

Enclosures: Submitted documents

cc: Mr. Richard D. Siegel  
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(w/o enclosures)