



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 11, 1998

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

OR98-0422

Dear Mr. Evans:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112692.

The Texas Municipal League Intergovernmental Risk Pool (the "Risk Pool") received a request for copies of legal billings submitted to the Risk Pool in connection with the lawsuit styled *Pothen v. City of Desoto*, No. 3:96-CV-0894-T (N.D. Tex.). You state that some of the fee bills have been released to the requestor. However, you assert that the legal billings from the law firm of McKenna & Cuneo are excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed a representative sample of the documents at issue.<sup>1</sup>

You state the following:

The City of DeSoto is a Member of the [Risk Pool] created by Interlocal Agreement between political subdivisions of the State of Texas. The Risk Pool is presently providing a defense to the City of DeSoto and certain officials/employees who have been sued in their individual capacities. The Risk Pool has retained separate counsel for the City and the individual Defendants because of a conflict of interests . . . the law firm of McKenna & Cuneo, L.L.P., . . . has been retained as separate counsel for the employees/officials sued in their individual capacity.

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You have invoked section 552.103 of the Government Code to protect the litigation interests of the Risk Pool's insureds.

Section 552.103(a) excepts from disclosure information:

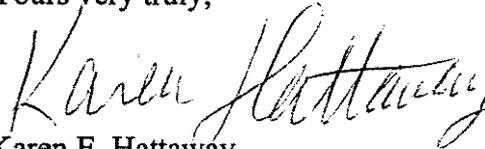
(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; 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 the requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). You have demonstrated that litigation is pending against the City of DeSoto and several of its officials. We have reviewed the submitted documents and marked the portions of the documents that relate to the litigation. The Risk Pool may withhold these marked portions from disclosure under section 552.103(a).<sup>2</sup>

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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

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Ref: ID# 112692

Enclosures: Copies of marked documents

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<sup>2</sup>We note that once all parties to the litigation have gained access to the information at issue, through discovery or otherwise, section 552.103(a) is no longer applicable. Open Records Decisions Nos. 551 (1990), 454 (1986). In addition, once the litigation has concluded, section 552.103(a) is no longer applicable. Open Records Decision No. 350 (1982).

cc: Mr. Durward Davis  
514 N. Hampton  
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(w/o enclosures)

Mr. Bruce L. Dean  
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(w/ marked documents)