



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 25, 1998

Mr. Jack E. Crump
Executive Director
Texas Commission on Jail Standards
P.O. Box 12985
Austin, Texas 78711-2985

OR98-0536

Dear Mr. Crump:

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# 113368.

The Texas Commission on Jail Standards (the "Commission") received a request for information concerning the operational plans of the Llano County Jail. Llano County asserts that the requested information is excepted from required public disclosure based on 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.).

Litigation is pending against Llano County. We have reviewed the pleading in the case of *T.W. v. Llano County*, No. A 97CA 887SS (W.D. Tex, filed Dec. 10, 1997) and believe the information at issue relates to that litigation. The Commission has not established that the Commission is or will be a party to this litigation. However, Llano County asserts section 552.103 applies in this case to protect the county's litigation interests. We conclude that section 552.103 is applicable in this instance as a political subdivision of the state is a party to pending litigation and as the county has asserted its litigation interest in the disclosure of the information requested. See Open Records Decision Nos. 469 (1987) (university may withhold material related to possible criminal litigation that was furnished to the district attorney), 141 (1976) (predecessor provision of section 552.103 applies to travel records of State Auditor to protect district attorney's litigation interests), 121 (1976) (university may withhold information under litigation exception if district attorney determines information should not be released); cf. Open Records Decision No. 586 (1991) (need of another governmental body may be compelling reason for non-disclosure of requested information), but see Open Records Decision Nos. 392 (1983) (where litigation involves private individual and private company, exception not applicable to information collected during investigation by Consumer Credit Commissioner), 132 (1976) (exception not applicable where school district not a party to litigation).

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 Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 113368

Enclosures: Submitted documents

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(w/o enclosures)