



Office of the Attorney General
State of Texas

May 20, 1998

DAN MORALES
ATTORNEY GENERAL

Mr. Bill Corsbie, P.C.
Attorney and Counselor at Law
3708 Clawson Road
Austin, Texas 78704-7751

OR98-1261

Dear Mr. Corsbie:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 115580.

The Southern Montgomery County Municipal Utility District (the "district") received a request for the "Declaratory Judgment Document" produced for the district. You contend that the requested record is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the document at issue.

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.

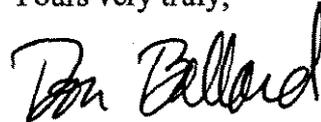
The district has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related 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 district must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you claim that the district is considering litigation concerning a bridge easement. You have also provided information that shows the district may engage local counsel to proceed with eminent domain litigation. After reviewing the submitted material and your arguments, we find that you have established that litigation is reasonably anticipated and the requested documents relate to the anticipated litigation. Thus, you may withhold the requested document under section 552.103.

We presume, however, that the requested document has not been filed with a court. Documents filed with the court are public documents and must be released. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). In addition, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 115580

Enclosures: Submitted document

cc: Mr. Charles Masson
25507 Yellow Pine Circle
Spring, Texas 77380-2279
(w/o enclosures)