



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1998

Mr. Merrill Nunn
City Attorney
City of Amarillo
509 S.E. Seventh Avenue
Amarillo, Texas 79105-1971

OR98-1540

Dear Mr. Nunn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116299.

The City of Amarillo (the "city") received a request for all information relating to the fatal accident involving a city employee, Antonio Gonzalez, Jr. The requestor is an employee of the Texas Workers' Compensation Commission asking on behalf of that agency. You claim that the requested information is excepted from disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

We first point out that information may be transferred between governmental agencies which are subject to the Open Records Act without destroying the confidential nature of the information. Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are grounded in the well-settled policy of the state that state agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* Open Records Decision No. 516 (1989). These decisions also recognize that a release to a state agency is not a release to the public for purposes of Government Code section 552.007, which prohibits the selective disclosure of information, and Government Code section 552.352, which provides criminal penalties for the release of information considered to be confidential under the act. *See id.* Thus, you may transfer the requested information to the Workers' Compensation Commission without waiving the city's ability to raise its discretionary exceptions in the future. Since you raise an exception to disclosure, however, we will consider whether it is applicable.

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

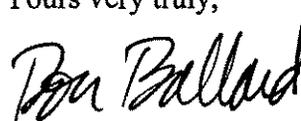
(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The city 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 city must meet both prongs of this test for information to be excepted under 552.103(a). We find that you have made the requisite showing that section 552.103 is applicable in this instance. You may withhold the requested information under section 552.103.

Generally, however, 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# 116299

Enclosures: Submitted documents

cc: Mr. Delbert Miller
Workers' Compensation Commission
4000 S. IH 35, MS 22 C
Southfield Building
Austin, Texas 78704-7491
(w/o enclosures)