



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 18, 1998

Ms. Odelia Garcia
Assistant City Secretary
City of Uvalde
P.O. Box 799
Uvalde, Texas 78802-0799

OR98-2235

Dear Ms. Garcia:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118158.

The City of Uvalde (the "city") received a request for a copy of financial reports submitted to the city in connection with a management contract for the municipal golf course, and also any requests the city might have made in connection with that contract. You assert that these records are protected from disclosure under section 552.103(a) of the Government Code. You also express concern that the records "will now become integrated with the work product of the attorney representing the city" and also that release of the records could be construed as an ethical violation. Copies of the responsive records were submitted to this office for review.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the 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 at 4 (1990). You submitted documents showing that suit has been filed against the city. Our review of the submitted records shows that they are clearly related to the pending litigation. However, once all parties to the litigation have had access to records, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Since all of the records submitted by the city have also been seen by the plaintiff, section 552.103(a) will not protect these records from disclosure.

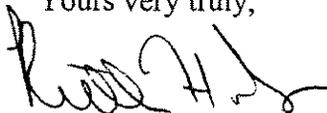
You indicate that these records may be part of the attorney's work product. In Open Records Decision No. 647 at 3 (1996), this office stated that documents protected under attorney work product could be withheld from disclosure under either section 552.103 or section 552.111 of the Government Code. To show the applicability of the attorney work

product exception, a governmental body must show (1) how the information was created in anticipation of civil litigation under the test set forth in *National Tank v. Brotherton*, 851 S.W.2d 193, 200 (Tex. 1993), and (2) how the information at issue consists of or tends to reveal the attorney's mental processes, conclusions, and legal theories. Open Records Decision No. 647 (1996). In this situation, the city has not shown the applicability of the attorney work product to the submitted records.

You have also expressed concern that releasing these records could be construed as an ethical violation. The Open Records Act, chapter 552 of the Government Code, provides that information is generally subject to public disclosure if it was collected, assembled, or maintained by law, ordinance, or in connection with the transaction of official business either (1) by a governmental body or (2) for a governmental body if the governmental body owns the information or has a right of access to it. Gov't Code § 552.002. Thus, all information held by or for a governmental body is generally subject to public access unless otherwise "expressly provided" by chapter 552. Gov't Code § 552.005. We note that a governmental body's release of public information as required by law would not appear to be an ethical violation by any standard. We also note that failure to provide access to public information can be a criminal violation. Gov't Code § 552.353.

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 118158

Enclosures: Submitted documents

cc: Mr. Juan O. Sanchez
La Voz de Uvalde County
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Uvalde, Texas 78802
(w/o enclosures)