

January 11, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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Ms. Frances Johnson
City Secretary
City of Blue Mound
301 Blue Mound Road
Blue Mound, Texas 76131

OR99-0068

Dear Ms. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121151.

The City of Blue Mound (the "city") received a request for various categories of records, including records concerning work done on a ditch that is located behind Globe Street. You assert that the records concerning the ditch are protected from disclosure under section 552.103(a) of the Government Code. Because the only records at issue are the ones concerning the ditch, we assume that all of the other requested items have been provided to the requestor. We will address your argument concerning the applicability of section 552.103(a) to the records concerning the ditch.¹

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 have shown that litigation is reasonably anticipated. Our

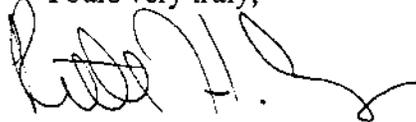
¹You submitted a sample of the documents at issue to this office for review. We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

review of the documents at issue shows these records are related to the anticipated litigation. However, information that has been made public already or that has been seen by the opposing party in the anticipated litigation is not protected from disclosure under section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982).

The submitted records include correspondence between the city and the opposing party. As discussed above, these records may not be withheld under section 552.103(a) because they have been seen by both parties to the litigation. Also, the requestor sent a letter to this office asserting that some of the items have already been publicly disclosed. Please note that if any of the documents at issue have been released to the public, they may not be selectively withheld from this requestor. Gov't Code § 552.007. We agree that the documents at issue which have not been made public or seen by the opposing party are protected from disclosure under section 552.103(a). We note that the applicability of section 552.103(a) ends once the litigation concludes. 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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 121151

Enclosures: Submitted documents

cc: Mr. Roger Gober
1724 Glenn Drive
Fort Worth, Texas 76131
(w/o enclosures)