



May 7, 1999

Mr. Steve Sparks  
Assistant District Attorney  
Criminal District Attorney Office  
Tarrant County  
401 W. Belknap  
Fort Worth, Texas 76196-0201

OR99-1242

Dear Mr. Sparks:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 124076.

The Tarrant County Criminal District Attorney (the "district attorney") received a request for information relating to an incident involving the requestor's client. You claim that the requested information 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 relating to litigation to which the state or a political subdivision is or may be a party. The district attorney 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. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *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). The district attorney must meet both prongs of this test for information to be excepted under section 552.103(a).

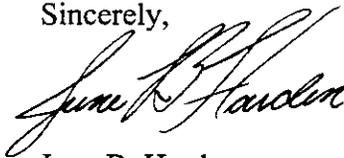
The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the

governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986). After reviewing the submitted materials and your arguments, we find that litigation is reasonably anticipated and that the documents you seek to withhold are related to the litigation. Thus, the district attorney may withhold the requested information under section 552.103(a).

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 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref.: ID# 124076

encl. Submitted documents

cc: Mr. Lateph Adeniji  
Attorney at Law  
5601 Bridge Street, Suite 420  
Fort Worth, Texas 76112  
(w/o enclosures)