



August 10, 1999

Mr. Douglas E. Manning
Assistant County Attorney
Orange County Courthouse
801 Division
Orange, Texas 77630

OR99-2247

Dear Mr. Manning:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128247.

The Orange County District Attorney's Office (the "office") received a request for documents relating to a former county engineer. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. You have released some of the documents responsive to the request but wish to withhold a notice of claim letter sent by the opposing party. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a) excepts from required public 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.

Gov't Code § 552.103.

Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated, and (2) the requested information relates to that litigation. *See University of Tex.*

Law Sch. v. Texas Legal Found., 958 S.W.2d 479 (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).

However, for purposes of section 552.103, if the opposing party to the anticipated litigation has previously had access to the record at issue, absent special circumstances, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in this record, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Because the opposing party drafted and sent this letter to you, you may not withhold this document pursuant to section 552.103(a).

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.

Sincerely,



Sue M. Lee
Assistant Attorney General
Open Records Division

SML\nc

Ref: ID# 128247

encl: Submitted documents

cc: Ms. Glenda Dyer
Editor
The Orange Leader
200 West Front Street
Orange, Texas 77630
(w/o enclosures)