



August 18, 1999

Ms. Katherine Mintor Cary  
Assistant Attorney General  
Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR99-2341

Dear Ms. Cary:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126592.

The Office of the Attorney General (the "attorney general") received a request for the recommendations, personal notes and communications of John Greytok, Attorney General John Cornyn, and County Attorney Ken Oden. Documents responsive to the request were provided to this office for review. You claim that the requested information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code.<sup>1</sup>

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. *University of Texas 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). The governmental entity must meet both prongs of this test for information to be

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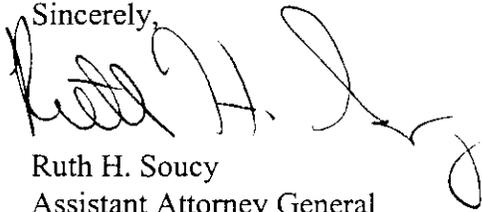
<sup>1</sup>We note that your brief asserts that section 552.101 of the Government Code protects information from disclosure that is within the attorney-client privilege. The attorney-client privilege you discuss is most properly asserted in connection with section 552.107 rather than section 552.101. Open Records Decision No. 574 (1990).

excepted under section 552.103(a). We have reviewed the information provided to this office and conclude that you have shown that litigation is reasonably anticipated. Additionally, our review of the documents at issue shows that they are related to the underlying issues in the reasonably anticipated litigation.

You therefore may withhold from disclosure under section 552.103(a) the records at issue that the opposing party to the anticipated litigation has not seen or had access to. Once information has been obtained by all parties to the anticipated litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). The applicability of section 552.103(a) also ends once litigation concludes or when litigation is no longer reasonably anticipated. 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.

Sincerely,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref: ID# 126592

Encl. Submitted documents

cc: Mr. Stephen N. Lisson  
Initiate!!  
P.O. Box 2013  
Austin, Texas 78768-2013  
(w/o enclosures)