



November 12, 1999

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR99-3221

Dear Ms. Graham:

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# 128805.

The City of Mesquite (the “city”) received a written request for certain witness statements that were taken during the investigation of a fatal shooting. You state that some of the responsive information has been released to the requestor, but contend that the remaining requested information is excepted from required public disclosure pursuant to, *inter alia*, section 552.103 of the Government Code. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991).

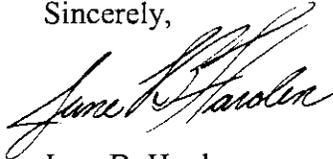
You have submitted to this office in connection with this request a copy of a “Notice of Wrongful Death Claim,” the city received following the shooting. In his claim letter, the attorney for the decedents survivors makes an explicit threat of litigation against the city for the allegedly wrongful death. Given the totality of the circumstances, we agree that the city may reasonably anticipate litigation regarding the shooting. Further, you have made the requisite showing that the requested information relates to that litigation for purposes of section 552.103. Accordingly, the city may withhold the information at issue pursuant to section 552.103.¹

¹Because we resolve your request under section 552.103, we need not address the applicability of the other exceptions you raised.

In reaching this conclusion, however, we assume that the opposing party in the litigation has not had prior access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103 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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RWP/ch

Ref: ID# 128805

cc: Ms. Lynn Kopp
600 Cambridge Drive
Irving, Texas 75061
(w/o enclosures)

Mr. Frank E. Sheeder, III
Cavazos, Hendricks, Poirot & Dewey, P.C.
900 Jackson Street, Suite 570
Dallas, Texas 75202-4425
(w/o enclosures)