



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 18, 1994

Mr. John J. Hightower
Olson & Olson
Three Allen Center
333 Clay Street, Suite 3485
Houston, Texas 77002

OR94-444

Dear Mr. Hightower:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25248.

The City of Brazoria (the "city") received a request for records relating to the city's solid waste landfill.¹ You contend that these records may be withheld from the public pursuant to the Open Records Act, section 552.103(a) of the Government Code. To secure the protection of section 552.103(a), the city must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

You have supplied information that shows the city is a party to litigation involving the city's solid waste landfill. You have supplied representative documents which appear to be related to that litigation. The city has therefore met its burden of showing that the requested information relates to litigation for purposes of section 552.103(a). The requested records may therefore be withheld from disclosure.²

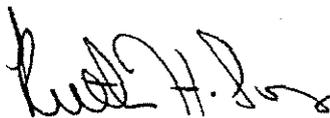
¹The requestor's letter to the city was dated May 12, 1993. The city's letter to this office was postmarked March 9, 1994. You explain in your letter that the city did not receive the requestor's letter until February 28, 1994. We note that if a governmental body does not request a decision from the attorney general within the tenth calendar day after receipt of a written open records request, the information is presumed public. Gov't Code §§ 552.301, .302.

²We 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 Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, the governmental body should submit a representative sample; but if each record contains substantially different information, all must be submitted). This letter does not reach, and therefore does not authorize the withholding of, any other

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had 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(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We note that 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) at 3. Also, since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the city's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 25248

Enclosures: Submitted documents

cc: Ms. Patricia Haylon
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909 Fannin at McKinney
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(w/o enclosures)

requested records to the extent that those records contain substantially different types of information than that submitted to this office.