



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 27, 1996

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0421

Dear Ms. Calabrese:

Your predecessor asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. That request was assigned ID# 23713.

The City of Houston (the "city") received a request for information about National Medical Waste of Texas, Inc. The city submitted to this office as responsive to the request handwritten notes and other documents. The city contends that this information is excepted under section 552.103(a) of the Government Code. To secure the protection of section 552.103(a), a governmental body 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, 212 (Tex.App. -- Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

You submitted to this office a petition the city filed with the Texas Natural Resource Conservation Commission ("TNRCC") to revoke National Medical Waste of Texas, Inc.'s ("NMW") medical waste disposal permit. For purposes of section 552.103, this office considers a contested case under the Administrative Procedure Act ("APA"), Gov't Code Chapter 2001, to be litigation. Open Records Decision No. 588 (1991) at 7 (construing statutory predecessor to the APA). Since provisions of a public hearing to revoke a petition are governed by the APA, the city has shown that litigation is pending with NMW. See 30 T.A.C. §§ 265.11, 265.16, 274.50.

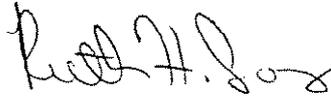
A review of the information submitted indicates that most of it is related to the litigation. The city may withhold from disclosure under section 552.103(a) the handwritten notes of the assistant city attorney who is handling the litigation for the city,

as the notes appear to be related to the litigation. We have also marked the portions of the memoranda submitted to this office that may be withheld, as these portions appear related to the litigation.

Please note that section 552.103(a) is inapplicable if the litigation has concluded or the other party to the litigation has already obtained the information at issue. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 349 (1982), 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.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 23713

Enclosures: Submitted documents

cc: Mr. Matthew J. Kemner
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(w/o enclosures)

Mr. Tim Lignoul
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