



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 15, 1996

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR96-1462

Dear Ms Nguyen:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 33678.

The City of Houston (the "city") received a request for information relating to an investigation by the Internal Affairs Division of the Houston Police Department of an alleged sexual assault involving a Houston police officer on February 7, 1994. Specifically, the requestor seeks

copies of all offense reports, supplemental reports, witness statements, scientific tests, witness list with addresses and phone numbers, Internal Affairs investigations, video tapes, audiotapes, photographs or any other documents pertaining to the investigation of the above referenced incident.

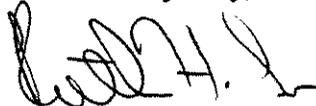
The city asserts that the requested information should be excepted from public disclosure pursuant to section 552.103(a) of the Government Code. To secure the protection of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information 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 have provided information showing that suit has been filed in connection with the alleged assault. We have reviewed

the records, and our review shows that they relate to the pending litigation. Thus, the city has met its burden of showing that litigation is pending and the information at issue may be withheld pursuant to section 552.103(a).

We note that the applicability of section 552.103(a) ends once the other party has had access to the records or once the litigation has concluded.¹ Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 350 (1982) at 3 and 349 (1982) at 2. We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, Open Records Decision No. 542 (1990) at 4, the department could choose to release the non-confidential information at this time. Gov't Code § 552.007.

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/SAB/ch

Ref: ID# 33678

Enclosures: Open Records Decision No. 638 (1996)
Submitted documents

cc: Mr. Jim L. Peacock
Attorney at Law
808 Travis, 23rd Floor
Houston, Texas 77002
(enclosures-Open Records Decision No. 638 (1996))

¹Some of the information at issue may be confidential by law and not available to the public even after litigation has concluded.