



Office of the Attorney General

State of Texas
September 6, 1996

DAN MORALES
ATTORNEY GENERAL

Mr. Peter G. Smith
Nichols, Jackson, Dillard, Hagar &
Smith, L.L.P
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR96-1608

Dear Mr. Smith:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 32609.

The City of Richardson (the "city"), which you represent, received a request for information concerning an "alleged sewage main backup at or near 304 S. Cottonwood Drive, Suite C on February 6, 1994." You contend that the requested information is excepted from public disclosure pursuant to section 552.103(a) of the Government Code.

We note initially that the requestor has asserted that the city did not timely seek a decision from this office concerning the request for records. The city, based on its April 4, 1995, letter to this office apparently also believes that its request for a decision may have been made in an untimely fashion. Section 552.301 provides that a request for a decision from this office must be made no later than ten days after receipt of a request for a decision. Failure to make a timely request results in the presumption that information is public. Gov't Code § 552.302.

Based on the information provided to this office, the city received the request for information on March 16, 1995. Because the tenth day to request a decision from this office fell on a weekend, the request was timely made on March 27, 1995, a Monday. *See* Gov't Code § 552.308 (post office cancellation shows whether request is timely made). Thus, the city's request for a decision from this office was made timely. We now address your section 552.103(a) argument.

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. We have

reviewed the records, and our review shows that they relate to the anticipated litigation. Thus, you may withhold the requested information pursuant to section 552.103(a).

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# 32609

Enclosures: Submitted documents

cc: Mr. Stephen B. Harpold
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(w/o submitted documents)