



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 10, 1996

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

OR96-2338

Dear Ms. Nguyen:

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# 102488.

The City of Houston (the "city") received a request for information concerning complaint made to the city that a residence is being built in the Houston Heights subdivision in violation of applicable recorded deed restrictions. However, the city seeks to withhold portions of the requested information based on the informer's privilege aspect of section 552.101 and sections 552.103(a) and 552.107(1) of the Government Code. You enclosed marked representative samples under Exhibits 3, and 8 of the information the city seeks to withhold.<sup>1</sup>

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing 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. The city must

---

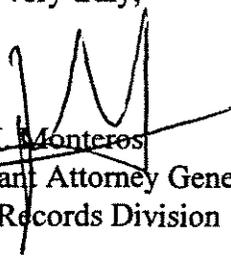
<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office

The city has provided information showing that litigation is reasonably anticipated, accordingly, we conclude that the documents are related to the anticipated litigation. Therefore, the city may withhold the Exhibit 3 documents under section 552.103(a)<sup>2</sup>. We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, 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)

Additionally, you assert that the document in Exhibit 8 is a confidential attorney-client communication under section 552.107(1). Section 552.107(1) excepts from disclosure communications that reveal client confidences or the attorney's legal opinion or advice. Open Records Decision Nos. 589 (1991) at 1, 574 (1990) at 3, 462 (1987) at 9-11. Section 552.107(1) does not except from disclosure factual recounting of events or the documentation of calls made, meetings attended, and memoranda sent. Open Records Decision No. 574 (1990) at 5. Our review of the document at issue shows that the entire document can be withheld from disclosure pursuant to section 552.107(1).

We are resolving this matter with this 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 may 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,

  
Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/rho

Ref.: ID# 102488

Enclosures: Submitted documents

cc: Mr. Ross Spence  
Craday, Jewett & McCulley, L.L.P.  
1400 Two Houston Center  
909 Fannin  
Houston, Texas 77010-1006  
(w/o enclosures)

---

<sup>2</sup>As we address the exception to disclosure under 552.103(a) of the Government Code, we will not address the exception based on the informer's privilege aspect of 552.101.