



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 29, 1997

Ms. Y. Qiyamah Taylor
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR97-0189

Dear Ms. Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103406.

The City of Houston (the "city") received a request for information specifying the amount of hours and the location of all overtime worked by several unspecified police officers. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

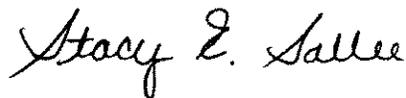
Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation.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

The city has submitted to this office for review a copy of the complaint in *Sondra McGuire v. Roy D. House*, Cause No. H-95-4272. The assistant city attorney handling this matter states in an affidavit that the plaintiff has filed amended pleadings with the court, adding the city as a party. Therefore, the city has established that litigation is pending. As Officer House is a party to the litigation, we conclude that the information regarding him is related to this pending litigation and may be withheld under section 552.103(a). However, as no other officers are named in the request or in the other correspondence submitted to this office, and the city has not submitted responsive

documents concerning those officers, we do not believe that the city has met its burden in establishing that overtime information regarding these other unnamed officers is related to the pending litigation. Therefore, the city may withhold only overtime information regarding Officer House under section 552.103(a).¹

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 103406

Enclosures: Submitted documents

cc: Mr. Ron McGuire
10004 Bissonnet #104
Houston, Texas 77036
(w/o enclosures)

¹We 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).