



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 8, 1997

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

OR97-0745

Dear Ms. Calabrese:

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# 105727.

The City of Houston (the "city") received a request for ten categories of documents "specifically referenced in City of Houston Ordinance No. 97-57 amending the Code of Ordinances, Houston, Texas, relating to regulation of sexually oriented businesses . . . and employees of sexually oriented businesses." You advise that the city will release the majority of the requested information to the requestor. However, you assert that some of the information responsive to items 4, 5, 6, and 10 of the request are excepted from disclosure by sections 552.103, 552.107, and 552.111 of the Government Code.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision 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).

In this instance, you have provided information showing that the city is a defendant in pending litigation, *N.W. Enterprises, Inc. v. City of Houston*, Civil Action No. H 97-196 (S.D. Tex. filed Jan. 23, 1997), involving the subject matter of the requested information.

After reviewing the documents submitted to this office in response to the request, we conclude that litigation is pending and that the requested information relates to the litigation. We, therefore, conclude that the city may withhold from disclosure the requested information under section 552.103(a).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. 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).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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/alg

Ref: ID# 105727

Enclosures: Submitted documents

cc: Mr. Louis J. Gurwitch
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(w/o enclosures)

¹Because our decision under section 552.103 is dispositive of your request, we do not consider your arguments under sections 552.107 and 552.111 of the Government Code.