



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 16, 1997

Mr. Jesús Toscano, Jr.  
Administrative Assistant City Attorney  
City Hall  
City of Dallas  
Dallas, Texas 75201

OR97-1392

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 106476.

The City of Dallas (the "city") received two related requests, from the same requestor, for various categories of information regarding certain named individuals, and information concerning solid and liquid waste disposal and environmental matters as they pertain to certain specified tracts of real estate. You state that the city has released the requested information, "except for several documents prepared by the City Attorneys [sic] Office in connection with ongoing litigation." In response to the request, you submitted to this office for review a copy of the information which you assert is responsive.<sup>1</sup> You assert that the submitted records are excepted from disclosure under sections 552.103 and 552.107(1) of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

To secure the protection of section 552.103(a), a governmental entity must first 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 contend that Exhibit "C" is related to pending litigation. You have provided for

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<sup>1</sup>You have submitted to this office information that apparently was sent for informational purposes only. In this ruling, we do not address that information. We also note that within the documents submitted to this office are drafts of pleadings apparently filed with a court. Although it is unclear whether the city contends that the filed documents are excepted from disclosure under sections 552.103 and 552.107, we believe that the city may not withhold those documents that are part of the public court record. See generally *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992).

our review a copy of a petition and related pleadings showing that litigation is pending. We have reviewed the submitted records and agree that they relate to on-going litigation. Thus, you may withhold the submitted records from disclosure pursuant to section 552.103(a).

The requested records may be withheld pursuant to section 552.103 only to the extent that the records have not been previously seen by the opposing parties in the pending litigation. Generally, absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Specifically, we note that in reviewing the submitted records, we did encounter certain correspondence which had been directed to the defendant's attorney in the pending litigation. Thus, the information that has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. We also note that the applicability of this section ends once the litigation has been concluded.

We are resolving this matter with an informal letter ruling rather than with a published open records decision.<sup>2</sup> 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,



Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/rho

Ref.: ID# 106476

Enclosures: Submitted documents

cc: Mr. Robert D. Whaley  
Whaley, Letteer & Mock  
3030 LBJ Freeway, Suite 1630  
Dallas, Texas 75234  
(w/o enclosures)

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<sup>2</sup>As the information at issue may, at this time, be withheld from disclosure pursuant to section 552.103(a), we need not address your other argument against disclosure.