



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 18, 1997

Ms. M. Bernadette McKay
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR97-1638

Dear Ms. McKay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 107411.

The City of San Antonio (the "city") received a request for several categories of information pertaining to the city's actions under its sexually oriented business ordinance. You inform us that you will release "copies of ordinances and related back-up material which was the subject of a portion" of the request. However, you claim that the submitted information is *excepted from required public disclosure* under section 552.103 of the Government Code. You have submitted the information at issue for our review. Some of the information you have submitted is a representative sample of documents responsive to some categories of the request.¹

First, you state that no records exist for some of the requested categories of information. The Open Records Act does not require a governmental body to make available information which does not exist at the time of the request. Open Records Decision No. 362 (1983). Therefore, the city does not have to comply with the request for information that did not exist at the time of the request.

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). 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.

Second, to be excepted under section 552.103, the city must demonstrate 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 claim that the submitted information is related to two pending lawsuits, styled *Natco, Inc. d/b/a Giorgio's of San Antonio et al. v. City of San Antonio et al.* and *Sports Cabaret, Inc. v. City of San Antonio*. You have submitted copies of the petitions and demonstrated that the requested information relates to the pending litigation. Thus, you may withhold the submitted information pursuant to section 552.103.

In reaching this conclusion, however, we assume that the opposing parties to the litigation have not had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that section 552.103(a) no longer applies once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

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Ref.: ID# 107411

Enclosures: Submitted documents

cc: Mr. Benjamin F. Walker
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(w/o enclosures)