



Office of the Attorney General
State of Texas

August 19, 1997

DAN MORALES
ATTORNEY GENERAL

Mr. John Steiner
Division Chief
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR97-1842

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 108624.

The City of Austin (the "city") received a request for the Department of Planning and Development's inspection records, including notes, correspondence, complaints, and case number concerning a specific property. You claim that the requested records are excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

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 552.103(a).

You state that the city is currently involved in pending litigation concerning the subject matter of this request. You have provided this office with a Municipal Court printout of the environmental appearance docket. You have shown that litigation is pending. You do not explain, however, how or why the documents at issue relate to the pending litigation. Open Records Decision No. 638 at 4 (1996) (governmental body must explain how requested information relates to subject of litigation). Nonetheless, after examining the submitted materials, it appears that they are related to the docketed suit for which you claim an exception. You may therefore, withhold the requested documents under section 552.103.

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. Further, 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).

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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 108624

Enclosures: Submitted documents

cc: Law Offices of Marc D. Murr, P.C.
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(w/o enclosures)