



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 17, 1997

Ms. Lan P. Nguyen  
Assistant City Attorney  
City of Houston Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR97-2076

Dear Ms. Nguyen:

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# 109251.

The City of Houston (the "city") received a request for seven categories of employment-related information. You state that the city is making available information responsive to categories 2 and 5 of the request. However, you claim that the remaining requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents you have submitted.<sup>1</sup>

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 governmental body 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 governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). In this instance, you explain that the city is currently

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<sup>1</sup>You state that the information submitted to this office in response to requested items 1, 3, and 4 is a "representative sample." 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.

involved in pending litigation, *Gutierrez v. City of Houston*, No. 97-22132 (280<sup>th</sup> Judicial District Court, Harris County, Texas). You have provided this office with a copy of the petition in that case. After reviewing the submitted materials, we conclude that litigation is pending and that the requested information relates to the litigation. The city may, therefore, withhold the requested information.

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).<sup>2</sup>

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,

  
Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/glg

Ref.: ID# 109251

Enclosures: Submitted documents

cc: Ms. Susan E. Hiatt  
Law Offices of Susan Eisner Hiatt  
1 Pinedale  
Houston, Texas 77006  
(w/o enclosures)

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<sup>2</sup>We note, however, that some of the information submitted to this office for review is deemed confidential by statute, the release of which may constitute a criminal offense. See Gov't Code § 552.352.