



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 29, 1997

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

OR97-2186

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# 109445.

The City of Houston (the "city") received a request for (1) "all amortization rulings and findings concerning sexually oriented business regarding Ordinance No. 97-75," (2) "information concerning the findings of fact and conclusions of law upon which the decisions were based," and (3) "all documents that explain the criteria relied upon by the [c]ity to evaluate the amortization applications and requests." You claim that the 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 sample documents you have submitted.¹

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).

¹We 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.

In this instance, you explain that the city is currently involved in pending litigation, *N.W. Enterprises, Inc. v. The City of Houston.*, Civil Action No. H-07-0196 (S.D. Tex). You have provided this office with a copy of the complaint 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 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 pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Moreover, documents filed with the court may not be withheld once they have been released to the other party in litigation. Open Records Decision No. 525 (1989); *see Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). Therefore, the city may not withhold under section 552.103(a) any documents that have been filed with the court. Finally, the applicability of section 552.103(a) 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. 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# 109445

Enclosures: Submitted documents

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