



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 2, 1998

Ms. E. Cary Grace
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR98-0878

Dear Ms. Grace:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 113637.

The City of Houston (the "city") received a request for mobile data transmissions. You assert that the requested information is excepted from required public disclosure pursuant to sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.¹

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. 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. You state that litigation is still pending. We have reviewed the documents at issue, and our review shows that they are related to the pending litigation. Thus, the city has shown the applicability of section 552.103(a).²

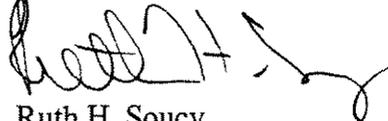
¹You state that some of the mobile data transmissions requested do not exist. We note that the Open Records Act applies only to information in existence, and does not require a governmental body to prepare new information. Open Records Decision No. 342 (1982).

²Because we make a determination under section 552.103(a), we need not at this time consider your additional arguments against disclosure.

We note, however, that section 552.103(a) does not protect from disclosure information that the opposing party in the pending litigation has had access to. Absent special circumstances, 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). We also note that the applicability of section 552.103(a) ends once the pending 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 upon as a previous determination regarding any other records. If you questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a long horizontal stroke extending to the right.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/SAB/ch

Ref.: ID# 113637

Enclosures: Submitted documents

cc.: Mr. Chadrick S. Henderson
Attorney at Law
1217 Prairie, Suite 100
Houston, Texas 77002
(w/o enclosures)