



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 11, 1998

Ms. Joan Kennerly  
Assistant City Attorney  
City of Irving  
P.O. Box 152288  
Irving, Texas 75015-2288

OR98-1439

Dear Ms. Kennerly:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116347.

The City of Irving (the "city") received a request for eight items of information. You maintain that items 1, 2, 5 and 6 do not exist. We assume that item 7 is also nonexistent as you state that a Neighborhood Integrity Department does not exist. You state that the city is releasing to the requestor items 4 and 8. You assert that sections 552.103 and 552.107(1) of the Government Code except from disclosure item 3.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is 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.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the

burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). In this instance, you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a) with the exception of six documents we have marked. Section 552.103 is inapplicable to the notices sent to the potential opposing party. If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). Further, the city has not explained how four documents relate to the litigation.<sup>1</sup> Additionally, we find that the city has not established that section 552.107(1) applies to the documents not covered by section 552.103. See Open Records Decision No. 574 (1990) (applying section 552.107(1) to confidential attorney-client communications containing attorney opinion or advice and client confidences).

We are resolving this matter with this 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 may 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,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/rho

Ref.: ID# 116347

Enclosures: Marked documents

cc: Mr. Mark Ovard  
701 E. Shady Grove  
Irving, Texas 75060  
(w/o enclosures)

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<sup>1</sup>In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).