



Office of the Attorney General
State of Texas
October 1, 1998

DAN MORALES
ATTORNEY GENERAL

Ms. Katheryn Heather West
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
Municipal Building
Dallas, Texas 75201

OR98-2361

Dear Ms. West:

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# 118389.

The City of Dallas (the "city") received a request for a copy of "all police calls for service, arrest reports, and offense reports" maintained by the city for specific locations in Dallas, Texas from June 23, 1997 through June 23, 1998. 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 reviewed the submitted information.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 at 4 (1990). The city must meet both prongs of this test for information to be excepted under section 552.103(a).

You explain that the city is the defendant in a lawsuit pending before the United States District Court of the Northern District of Texas. The suit alleges that the

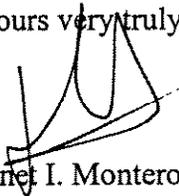
¹We assume that the "representative samples" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

May 28, 1997 amendments to Chapter 41A (Sexually Oriented Businesses) of the city code violate the plaintiff's first amendment rights and do not provide sufficient alternate means of communication, i.e. sufficient alternate locations. You further explain that the May 28, 1998 amendments had the effect of reclassifying 16 class A dance halls as adult cabarets and thus requiring these businesses to comply with chapter 41A by relocating more than 1000 feet from protected uses, obtaining an exemption from the 1000 foot restriction, or ceasing to operate as a sexually oriented business. After reviewing the submitted documents, we conclude that the documents which comprise sexual business reports are related to the litigation. Therefore, although the city has not established the relatedness to the documents which do not involve sexual business reports and thus must release those document, the city may withhold the remaining requested documents which relate to the sexual businesses under section 552.103(a).

We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). 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).

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,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/nc

Ref: ID# 118389

Enclosures: Submitted documents

cc: Mr. Stuart Pully
P.O. Box 781609
Dallas, Texas 75387
(w/o enclosures)