



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 7, 1998

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

OR98-2969

Dear Ms. Nguyen:

You ask this office to reconsider our decision in Open Records Letter No. 2119 (1998). Your request for reconsideration was assigned ID# 120183.

Open Records Letter No. 2119, which concerned a request for "[a]ny and all legal opinions relating to streets and/or alleys and/or easements in the Houston Heights," determined that the City of Houston (the "city") may withhold from required public disclosure portions of the information based on section 552.107(1) of the Government Code. You now seek to withhold the requested information in its entirety based on section 552.103 of the Government Code. You inform us that on July 14, 1998, the city was served as a defendant in a lawsuit in which plaintiffs seek a declaratory judgment, injunctive relief and damages against the city for the city's alleged actions with respect to the alleys in Houston Heights. *PremierVictorian Homes, Inc. v. City of Houston*, No. 98-13161 (280th Dist. Ct., Harris County, Tex.) You assert that the requested information relates to this pending litigation and that release of the information would adversely affect the city's litigation interest.

Section 552.301 of the Government Code requires a governmental body that seeks to withhold requested information from disclosure to raise an exception to disclosure within ten days of receiving a request for information. The city did not raise section 552.103 in its original request to this office for a decision. You state that due to a change in circumstances while your request for a decision was pending in this office, section 552.103 should nevertheless now apply to the information.

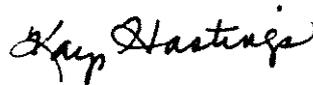
Generally, discretionary exceptions must be timely raised or they are waived and the information is public unless a compelling demonstration that the information should not be released is shown. See Open Records Decision No. 630 (1994); Gov't Code § 552.301.

A compelling demonstration exists when the information is made confidential by law or when third party rights are implicated by the release of the requested information. Open Records Decision No. 150 (1978). With regard to section 552.103 in particular, this office has stated that a governmental body must submit to this office information about a change in the circumstances of litigation as soon as possible after the governmental body receives notice of that change. ORD 630 at 4 (1994).

You state that the city was served on July 14, 1998, yet the city did not notify this office of the change in circumstances until September 16, 1998. We do not believe the city has notified this office of the litigation within a reasonable time of being served. We therefore find that the city has not made a compelling demonstration that the information should not be released to the public. We affirm Open Records Letter No. 98-2119.

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
Deputy Chief
Open Records Division

KHH/mjc

Ref.: ID# 120183

Enclosures: Submitted documents

cc: Ms. Tracey D. Conwell
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(w/o enclosures)