Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 22, 1998

Ms. Julie B. Ross
Haynes & Boone, L.L.P.
201 Main Street, Suite 2200
Fort Worth, Texas 76102-3126

OR98-3228

Dear Ms. Ross:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID# 120673.

The City of Coppell (the "city") received requests for information from R.G. Harrell that ostensibly relates to current litigation styled, *Michael A. Scott vs. The City of Coppell*. The requests were received by the city on September 18, 1998 and October 16, 1998. The city seeks to withhold a portion of the responsive information. You submitted requests for our opinion regarding this information. This letter is our consolidated response to the city's submissions. The requestor seeks (1) a copy of a letter referenced in a summary of complaint dated 1/15/98 (hereinafter the "letter") and (2) all documents used by the city in support of its argument for withholding item 1 from disclosure including "all correspondence, written comments, legal arguments submitted to the AG on or before the 15th day after the city received [the request for item 1]"[1] (hereinafter "supporting materials"). You claim that a portion of the requested information is excepted from disclosure under section 552.103 of the Government Code. You also contend that a portion of the requested information should be withheld pursuant to Open Records Decision No. 459 (1987). You have submitted responsive documents, marked to indicate the information you seek to withhold and the relevant exceptions. We have considered the issues you raise and reviewed the submitted information.

Section 552.103(a) excepts from required public disclosure information (1) relating

[1]We construe this as limited to items related to the original request.

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.

You have supplied a copy of the Plaintiff's Original Petition, filed under cause number DV 98-06596 in the 14th Judicial District Court. You advised our office that this case is pending. You have supplied an affidavit from an attorney representing the political subdivision that indicates a determination that "the letter" should be withheld. You have marked a portion of this affidavit, which you also seek to withhold under section 552.103. We concur that "the letter" and the marked information is related to the pending litigation and may be withheld under section 552.103 of the Government Code. Note, however, that, absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent the opposing party has seen the records, there is no justification for now withholding such information from the requestor pursuant to section 552.103(a), unless the information is confidential by law.[2] Similarly, section 552.103(a) does not authorize withholding materials which have already been made available to the public. Open Records Decision No. 436 (1986).

You also argue that a portion of your correspondence to this office should be withheld because it reveals potentially excepted information. Our office has held that request for opinion letters (including all legal arguments made therein) are generally open to the public, but where such letters contain the information subject to the request or information previously held by this office to be excepted from disclosure, such information may be withheld. Open Records Decision No. 459 (1987). Our review of the subject documents indicate that they reveal the information the city seeks to withhold (i.e. the contents of "the letter"). Therefore, subject to the caveats expressed in our discussion of item 1, the relevant information, as marked by you, may be withheld. We note that this information is not exhaustive of the "supporting materials" requested and that you have not urged an exception to disclosure for the balance of your correspondence to this office, those materials must be released.

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

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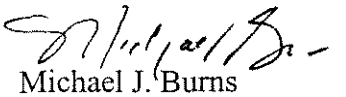
[2]Please note that in disclosing records already made available to the opposing party, or in releasing records once litigation is concluded or no longer anticipated, confidential information must be withheld. *See.* e.g. Government Code §§ 552.117 (peace officer address, telephone number social security number, and family information), 552.352 (criminal penalties for distribution of confidential information).

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 120673

Enclosures: Submitted documents

cc: Mr. R. G. Harrell
548 W. Oak Grove
Coppell, Texas 75019
(w/o enclosures)