



October 19, 1999

Mr. Darrell G-M Noga  
Cooper & Scully  
Founders Square  
900 Jackson Street, Suite 100  
Dallas, Texas 75202

OR99-2958

Dear Mr. Noga:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128201.

The City of Coppell (the "city"), which you represent, received a request, identified by the city as 5077, seeking the following information:

1. All documents pertaining to ad correspondence with H.U.D;
2. All "Cooperation Agreements" with H.U.D;
3. All documentation of communication with H.U.D, and
4. All documentation of the City of Coppell's exploration efforts "into various housing opinions which would expand the housing opportunities for low-income persons."

You indicate that you do not seek to withhold information responsive to items 2 or 4, except to the degree that such information is also responsive to items 1 or 3. You have submitted a representative sample of the information you seek to withhold.<sup>1</sup> You claim that this

---

<sup>1</sup>We assume that the "representative sample" 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.

information is excepted from disclosure under section 552.103, 552.107 and 552.111 of the Government Code. You have provided a "confidential memorandum," initially identified as exhibit 3 and subsequently identified as exhibit 5, in support for your argument under section 552.103. The city received another request, 5093/5093-A, seeking the city's correspondence to the Attorney General supporting the city's argument for withholding information responsive to request 5077 under section 552.103. You seek to withhold the "confidential memorandum" as attorney work-product. We assume that the responsive information that you do not contend is excepted from disclosure has been released. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant facts and documents to show 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.). You have supplied pleadings in the case *Jim Sowell Construction v. The City of Coppell*, No.3-96-CV-0666-C (N.D. Tex). You assert that this case is pending. The provided pleadings indicate that the information responsive to items 1 and 2 of request 5077 are related to this pending litigation. We conclude that this information may be withheld under section 552.103(a) of the Government Code.

However, absent special circumstances, where the opposing party to the anticipated litigation has had access to the records at issue, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in this pending litigation have seen or had access to any of the information in these records, there is no justification for now withholding that information from the requestor pursuant to section 552.103(a). Also note that 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).

As regards information responsive to request 5093/5093-A, we first note that a governmental body's letter to the attorney general stating why information is excepted from public disclosure is ordinarily public. Open Records Decision No. 459 (1987). However, where such a letter reveals protected or confidential information, the attorney general will not disclose that information. *Id* at 1. In this case, the "confidential memorandum" you seek to withhold contains no information that is confidential or otherwise protected. You assert that this document constitutes attorney work product. However, to except a document as work product it must be shown that the document 1) was created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. Open Records Decision No. 647 (1996). The "confidential memoranda" submitted to this office was prepared as part of the city's duties under the Public Information

Act, rather than for litigation purposes. This information may not be withheld as attorney work product. As no part of this document is confidential or otherwise excepted from disclosure, it 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 determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/ch

Ref: ID# 128201

Encl. Submitted documents

cc: Mr. Arthur H. Kwast  
P.O. Box 1397  
Coppell, Texas 75019-1397  
(w/o enclosures)