



November 12, 1999

Mr. Gary W. Smith
Legal Advisor
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR99-3219

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 129507.

The City of Baytown (the “city”) received a written request for, among other things, “any prefaces presented [to the city council] prior to the work session or the City Council meetings held on 8-26-99.”¹ You state that some of the requested information has been released. You have submitted to this office for review one document that you state is not responsive to the request in that it does not constitute a “preface.” In the alternative, you contend the document is excepted from required public disclosure pursuant to, *inter alia*, section 552.103 of the Government Code.

You describe a “preface” as a document prepared by city staff that contains “summaries of the basis for all proposed Council actions.” Based on the limited information before us, it is not clear to this office whether the document at issue constitutes a “preface.” However, assuming *arguendo* that it does, we conclude that you have met your burden of demonstrating that it may be withheld from the public pursuant to section 552.103.

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.);

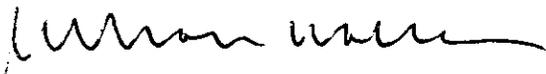
¹We assume the city has released the other requested documents to the requestor.

Open Records Decision No. 588 at 1 (1991). You have submitted to this office in connection with this request a copy of the "Plaintiff's Verified Original Petition and Application for Injunctive Relief," which was filed against the city. We agree that the document at issue "relates" to that litigation for purposes of section 552.103. Accordingly, the city may withhold the information at issue pursuant to section 552.103.²

In reaching this conclusion, however, we assume that the opposing party in the litigation has not had prior access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We further assume that the city has not released the contents of this document to the public via public discussion during a city council meeting. *Cf.* Open Records Decision No. 137 at 5 (1976) and authorities cited therein (when agency chooses to adopt or incorporate by reference intra-agency memorandum in explaining in public basis of decision made, exception is waived and information to which it referred must be made public). We also note that the applicability of section 552.103 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.³ 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,



William Walker
Assistant Attorney General
Open Records Division

WMW/RWP/ljp

²Because we resolve your request under section 552.103, we need not address the applicability of the other exception you raised.

³In concluding that the city may withhold information pursuant to section 552.103, this office assumes that the city complied with section 552.301(d) of the Government Code and provided the requestor, within ten business days following receipt of the records request, a copy of the city's request for a ruling from this office. If it did not, the requested information is presumed to public and must be released in its entirety. *See* Gov't Code § 552.302.

Ref: ID# 129507

Encl: Submitted documents

cc: Ms. Jan Grant
2021 West Governors Circle
Houston, Texas 77013
(w/o enclosures)