



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 19, 1994

Ms. Laura S. Portwood
Assistant City Attorney
City of Houston
Post Office Box 1562
Houston, Texas 77251-1562

OR94-457

Dear Ms. Portwood:

You ask if 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# 24129.

The City of Houston (the "city") received a request for information about 18 named buildings. You initially asserted that information about the buildings is excepted under section 552.103(a) because a number of the buildings had been named in a complaint filed with the Department of Housing and Urban Development. That complaint has been subsequently dismissed. You indicate that you have released to the requestor information about all but two of the buildings, one at 8525 Pitner and the other at 5555 Antoine. You have asserted that the requested information is excepted under sections 552.103(a), 552.107, and 552.111.

Section 552.103(a) excepts from public disclosure information

(1) relating 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.

To assert that information is excepted under section 552.103, a governmental body must demonstrate that the requested information relates to pending litigation. Open Records

Decision No. 551 (1990). You have submitted documents that show lawsuits concerning these two properties are pending against the city. We have marked the packet of documents that appear to be related to the litigation, and you may withhold this information under section 552.103. However, we assume that the opposing party to the litigation has not had access to the records at issue.¹ Once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982).²

You submitted documents as being excepted under section 552.103(a) which related to properties other than the two named properties. In considering your section 552.103(a) assertion, we reviewed only the material you submitted to this office that relates to the properties at 8525 Pitner and 5555 Antoine and the pending litigation. However, many of the documents were not clearly marked, so it was difficult to determine which were related to the Pitner and Antoine properties. Several of the documents were unreadable, so we were unable to review them. We also did not review documents that were unresponsive to the request, including newspaper articles and a posted job notice.³

You asserted that some documents which do not relate to the properties at 8525 Pitner and 5555 Antoine are protected under section 552.101 as the work of attorneys. These documents consist of correspondence between city attorneys and city staff. In *Open Records Decision No. 574 (1990)*, this office determined that the attorney-client privilege is specifically covered under section 552.107. We therefore assume that you meant to assert an exception under section 552.107 rather than section 552.101.⁴

¹Some of the information excepted under section 552.103(a) includes court papers to which the other parties have had access, but that has handwritten information concerning the two properties. The handwritten information that relates to the litigation is excepted under section 552.103(a). You also submitted for review court papers to which the other parties have had access but that do not contain any handwritten information. These papers may not be withheld.

²We note that some of the information for which you asserted an exception under section 552.103(a) may also be protected by common-law privacy under section 552.101 and therefore may not be disclosed after the litigation has concluded. We have marked this information and caution that release of confidential information is a criminal offense.

³We note that you also submitted to this office for review statutes, ordinances, city building codes and procedural rules for a city commission. We understood from your correspondence that these had already been released to the requestor. If they have not already been disclosed, you must disclose these documents. Open Records Decision Nos. 551 (1990); 221 (1979); *see also* Gov't Code § 552.022(9), (10).

⁴In your letter to this office, you stated that some of the documents you submitted might be excepted under section 552.107. However, you failed to specifically mark any of the documents you submitted as being excepted under section 552.107. The documents we are considering under section 552.107 were marked by you as being excepted under section 552.101.

Section 552.107 excepts information within the attorney-client privilege that contains legal advice, legal opinion, or that reveals client confidences. Open Records Decision Nos. 574; 462 (1987) at 9-11. We have marked the portions of the submitted documents excepted by section 552.107. The remaining information must be disclosed.

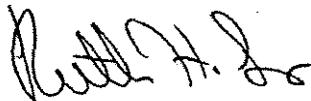
You submitted several documents unrelated to the two named properties that you contend are excepted under section 552.111.⁵ This office previously held that section 552.111 was applicable to advice, opinion and recommendation used in the decision-making process within an agency or between agencies. Open Records Decision No. 574 at 9. However, in *Texas Dep't. of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex.App.--Austin 1992, no writ) the court addressed the proper scope and interpretation of this section. In light of that decision, this office reexamined its past rulings. In Open Records Decision No. 615 (1993) at 5, this office held that

to come within the [section 552.111 exception], information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters [Emphasis in original]

We have marked the information relating to policymaking functions in the submitted documents which is excepted by section 552.111. The remaining information must be disclosed. However, it is within the city's discretion to release information that is excepted under sections 552.103 and 552.111. Gov't Code § 552.007; Open Records Decision Nos. 542 (1990) at 4 (section 552.103(a) exception may be waived); 473 (1987) at 2 (governmental body may waive protection of sections designed to protect governmental interests, including section 552.103); 470 (1987) at 2 (information excepted by section 552.111 may be released).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

⁵We are unable to determine from your correspondence if you have already released some of this information to the requestor. If this information has already been disclosed, you may not now withhold it. Gov't Code § 552.007(b); Open Records Decision No. 463 (1987) at 1-2.

RHS/KKO/rho

Ref: ID# 24129

cc: Ms. Patricia Moore
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