



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 19, 1994

Ms. Candace L. Chappell
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR94-561

Dear Ms. Chappell:

The City of El Paso (the "city") has asked if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The city's request was assigned ID# 27382.

The city received a request to examine all of the invoices submitted by the El Paso Hispanic Chamber of Commerce (the "chamber") for "reimbursement" by the city. The requestor states that "[t]he records requested are relevant only to the provisions of the contract between the City and the Chamber, involving Hotel/Motel Occupancy taxes, dated November 16, 1993." You state that the city has provided the requestor with various documents that are responsive to the request.¹ However, the city has not released two documents, titled Exhibits G and H, that it contends are excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must 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, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

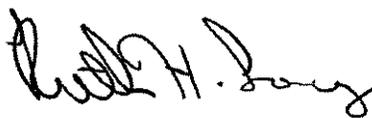
¹You submitted information that shows the city council authorized the mayor to sign a contract with the chamber for fiscal year 1993-94 for the promotion of El Paso as a destination for Hispanic tourism and conventions. The requestor was provided information concerning installment payments under the contract. You submitted to this office Exhibit I, which you indicate was an installment payment paid late and "does not fall within the ambit of the 1993-1994 contract in issue." A review of Exhibit I shows that it does not appear to be responsive to the request because it relates to a 1992-1993 contract with the Chamber. Therefore this ruling does not apply to Exhibit I.

You have provided information showing that the city has been sued for alleged mismanagement of public funds to purchase memberships from the chamber. A review of Exhibits G and H indicates that these documents are related to that litigation. Since you have shown that the city is engaged in litigation and that the documents at issue are related to that litigation, these documents may be withheld from disclosure under section 552.103(a).

In reaching this conclusion, we assume that the opposing parties to the litigation have not previously had 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(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). The applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the city's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 27382

Enclosures: Submitted documents

cc: Mr. Oscar B. White
7098 Dale Road
El Paso, Texas 79915
(w/o enclosures)