



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 27, 1994

Mr. Peter G. Smith  
Nichols, Jackson, Dillard, Hager &  
Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR94-594

Dear Mr. Smith:

You have asked if certain information is subject to public disclosure under the Texas Open Records Act, Government Code Chapter 552. Your request was assigned ID# 26908.

The City of Coppel (the "city") received a request for information relating to (1) the city's existing master plan and updates; (2) any prior master plans; (3) information about zoning and plat applications submitted to the city since 1987; and (4) information relating to city council and city planning and zoning meetings from January 1, 1993 to the date of the request.<sup>1</sup> You indicate that the city has provided the master plans and updates; newspaper articles; citizen commentary letters; agendas and minutes<sup>2</sup> for the city

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<sup>1</sup>The requestor indicated that the request included responsive documents "up to and including the date of production." The Open Records Act, Government Code chapter 552, applies only to information in existence when the request is received by the governmental body, not to information that comes into existence after the request is received and continuing through the date the documents are produced. Open Records Decision No. 452 (1986) at 3.

<sup>2</sup>The requestor complained to this office that the city did not supply minutes from city council and city planning and zoning commission meetings that may have been maintained in another form but had not yet been typed. The requestor states that minutes "in whatever form they are maintained" should be provided to the public upon request. In Open Records Decision No. 225 (1979), this office stated that notes used to produce the typed minutes of a public meeting are subject to public inspection.

We note that the city indicates it made tape recordings from the meetings available to the requestor, but that the requestor wanted typed minutes. It would appear that the city has made information

council and city planning and zoning commission; and records of approvals and denials pertaining to zoning and plats.<sup>3</sup> You contend, however, that other information is 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.

The city has met its burden of showing that litigation is pending, by providing documents showing that the city has been sued. The city has submitted to this office for review one document which it asserts is a representative sample of the information at issue.<sup>4</sup> The submitted document is related to the litigation. Since the city has met its burden of showing that section 552.103(a) is applicable, the information at issue may be withheld from disclosure.

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.

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(Footnote continued)

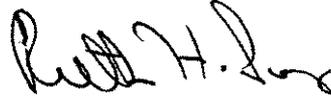
available to the public if it provides tape recordings from the meetings when the minutes have not yet been typed.

<sup>3</sup>You stated that the request was "too broad to comply with." It appears, however, that the city has identified information responsive to the request.

<sup>4</sup>In reaching our conclusion here, we assume that the document submitted as a representative sample is truly representative of the requested records as a whole. See Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). You also state that the city is still looking for documents that may be responsive to the request. Please note that 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.

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# 26908

Enclosures: Submitted documents

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