



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 28, 1995

Ms. Tracy R. Briggs
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-143

Dear Ms. Briggs:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 30239.

The City of Houston (the "city") received a request for the following:

1. A list of all city building inspectors . . . and the license plate of the City of Houston vehicle they currently drive.
2. Mobile cellular phone records for Jimmy Schindewolf since January 1, 1994.
3. Documents detailing all investigations conducted by Royce Wells in the Public Works Department since January 1, 1992.
4. All memorandum and other written correspondence between Royce Wells and Jimmy Schindewolf since January 1, 1992.
5. All records detailing public works contracts between the City of Houston and Brier-Schindewolf.

The city has released the majority of documents requested. However, as to request item Nos. 3 and 4, you contend that certain responsive documents are excepted from disclosure pursuant to sections 552.103(a), 552.107(1), and 552.108 of the Government

Code. The documents at issue have been submitted to this office for review and are labeled Exhibit Nos. 3, 5, and 7.¹

You contend that Exhibit Nos. 3 and 7 are excepted from disclosure pursuant to 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 provided information showing that there is litigation pending as to two matters and that the documents in Exhibit Nos. 3 and 7 are related to the subject matters of the pending litigation.

However, the city may not withhold under section 552.103(a) the administrative order on consent in Exhibit No. 3. This document may not be withheld under section 552.103(a) as it has been seen by all parties to the litigation. Absent special circumstances, once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. Once the opposing parties in the 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). To the extent that the other documents in Exhibit Nos. 3 and 7 have not been seen by the opposing parties in each respective pending litigation, you may withhold these other documents from disclosure pursuant to section 552.103(a).²

You also raised section 552.107(1) as to the documents in Exhibit No. 3. We need not address this argument as to the documents that may be withheld from disclosure pursuant to section 552.103(a). However, we will address your argument under section 552.107(1) as it relates to the administrative order on consent. This document has been seen and signed by both parties. It is not excepted under section 552.107(1), because it does not fall within an attorney-client privilege. *See* Open Records Decision No. 574 (1990) at 3-4 (discussion of what type of information is within the privilege).

¹You also submitted to this office other documents not at issue. Exhibit No. 1 is your letter to this office. Exhibit No. 2 is a copy of your letter to the requestor. Exhibit No. 4 is an affidavit to show that litigation is pending. Exhibit No. 6 is an affidavit to show that the matter is still under police investigation. You originally had asserted that Exhibit No. 8 was excepted from disclosure but later decided to release it to the requestor, so we need not consider that exhibit.

²Please note that the applicability of section 552.103(a) ends as to each Exhibit once the respective pending litigation ends. 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, the city may choose to release this information. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

Because the administrative order on consent may not be withheld from disclosure under either section 552.103(a) or 552.107(1), it must be released.

You contend that Exhibit No. 5 is excepted from disclosure pursuant to section 552.108, as it concerns part of an investigation recently opened by the Public Integrity Unit of the Houston Police Department. Section 552.108 excepts from disclosure:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . ; [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement.

This office has concluded that during the pendency of a criminal investigation, law enforcement agencies may withhold all information gathered during the course of the investigation under section 552.108 except for information which is typically found on the front page of the offense report. Exhibit No. 5 does not contain front page offense report information. Since the information concerns an ongoing criminal investigation, Exhibit No. 5 may be withheld from disclosure.³

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

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³Because section 552.108 is discretionary with the governmental body claiming the exception, the city may choose to voluntarily release this information. Gov't Code § 552.352; Open Records Decision No. 216 (1978) at 2. The city may not withhold this information from disclosure once the investigation is over unless the city can demonstrate that release would unduly interfere with law enforcement or prosecution. Open Records Decision No. 518 (1989).

Ref.: ID# 30239

Enclosures: Submitted documents

cc: Mr. Wayne Dolcefino
KTRK-TV
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(w/o enclosures)