



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 18, 1995

Mr. Robert J. Gervais  
Assistant City Attorney  
Legal Department  
City of Galveston  
P.O. Box 779  
Galveston, Texas 77553-0779

OR95-286

Dear Mr. Gervais:

You ask whether 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# 32749.

The City of Galveston (the "city") received an open records request for the following:

1. Copies of dispatch logs for an accident that occurred on March 28, 1995, at 11:00 a.m. at 19th Street and Postoffice;
2. Tapes of telephone calls to A & A and to AAAA and the computer and/or radio transmissions between 10:50 a.m. and 11:40 a.m.;
3. Telephone calls, transmissions, or correspondence concerning the accident on March 28, 1995, between 3:00 p.m. and 4:00 p.m. at 49th Street and Avenue P 1/2.

You state the city is currently involved in a lawsuit with A & A Wrecker styled *A & A Wrecker Service, Inc., et al v. City of Galveston, Texas, et al*, No. G-95-111, filed in the U.S. District Court, Southern District of Texas. You have submitted a copy of the filed petition and copies of the requested records and tapes for our review. You contend that the records requested may be withheld from disclosure under section 552.103(a) of the Government Code because litigation is pending and the requested records relate to that pending litigation.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991) at 1. After reviewing the information submitted to this office, we conclude that the city has met its burden of showing that litigation is currently pending and that the records requested relate to that litigation.

In reaching this conclusion, we assume that the opposing parties in this 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, 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 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). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Also, since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within your 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. 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 any questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes  
Assistant Attorney General  
Open Government Section

KPB/RHS/rho

Ref.: ID# 32749

Enclosures: Submitted documents and tapes

cc: Ms. Arlene Anderwald  
c/o Mr. Noel Anderwald, Jr.  
2117 65th Street  
Galveston, Texas 77551  
(w/o enclosures)