



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 13, 1995

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-399

Dear Ms. Nguyen:

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# 32403.

The City of Houston (the "city") has received a request for information relating to City Ordinance No. 93-177, as amended by City Ordinance No. 93-218, project number 94-009, including "all notes, maps, diagrams, letters, applications, city council records, minutes of meetings and hearings." The city asserts that this information is excepted from required public disclosure under section 552.103(a) of the Government Code.

At the outset, we note that the request seeks some information, *i.e.*, city council records, minutes of meetings and hearings, that is the sort of information that may never be excepted from required public disclosure under section 552.103. *See* Gov't Code § 552.021(4), (10); Open Records Decision Nos. 551 (1990) (municipal ordinance may not be withheld from public disclosure under statutory predecessor to Gov't Code § 552.103), 221 (1979) ("official records of public proceedings of a governmental body are among the most open of public records" which may not be withheld under statutory predecessor to Gov't Code § 552.103). Any such information that is responsive to the request must be released.¹

¹The city may rely on the above-cited opinions as prior determinations, *see* Gov't Code 552.301, that municipal ordinances and records of public meetings are not excepted from required public disclosure under section 552.103. The city should refrain from seeking a decision from this office about such records.

As to the remaining responsive information, section 552.103(a) excepts from required public disclosure information relating to litigation "to which the state or political subdivision . . . is or may be a party." Gov't Code § 552.103(a). Section 552.103 requires concrete evidence that litigation is realistically contemplated; it must be more than mere conjecture. Open Records Decision Nos. 518 (1989) at 5, 328 (1982). Thus, to secure the protection of this exception, a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990); *see also* Open Records Decision No. 588 (1991) (contested case under APTRA is litigation for purposes of former § 3(a)(3) exception).

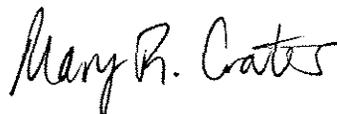
You have submitted an affidavit from a senior assistant city attorney stating that complaints about the city's neighborhood traffic project programs pursuant to City Ordinance No. 93-177 are currently under investigation by the Southwest Office of Fair Housing and Equal Opportunity of the United States Department of Housing and Urban Development ("HUD"), and that HUD has indicated it will undertake a "systematic investigation" with regard to all of the city's neighborhood traffic projects programs. HUD letters attached to the affidavit suggest that these complaints have been filed under title VI of the Civil Rights Act of 1964 and section 109 of the Housing and Community Development Act of 1974. The affidavit states that litigation can be reasonably anticipated because "litigation is a remedy provided for in the controlling federal law." The affidavit also indicates that project number 94-009 is subject to the HUD investigation. Your letter states that the requested information "involves documents considered to be relevant to the [HUD] investigation." On the basis of the affidavit, your letter, and our review of the documents, we conclude that the city has demonstrated that litigation between the city and HUD is reasonably anticipated, *cf.* Open Records Decision No. 386 (1983) (complaint before EEOC indicates substantial likelihood of litigation), and that the information requested relates to the anticipated litigation.

We conclude that the city may withhold the remaining requested information under section 552.103(a). Of course, section 552.103 is inapplicable once the opposing party has had access to the information at issue. *See* Open Records Decision No. 597 (1991) (litigation exception does not allow governmental body to withhold information already disclosed to other party in litigation). Therefore, the city may not withhold information under section 552.103 if HUD has already had access to it.²

²The city asserts globally that HUD is undertaking a "systematic investigation" of all neighborhood traffic project programs, but has failed to establish that the requested information relates to any particular complaint. As a result, the city has failed to demonstrate that the requested information relates to anticipated litigation between the city and any particular individual complainant. Therefore, we conclude that it is only relevant whether HUD has had access to the information. It is immaterial whether any particular complainant has or has not had access to the information. Assuming that HUD has had access to information, it must be released, even if particular complainants have not had access to it.

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 may 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,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/RHS/rho

Ref.: ID# 32403

Enclosures: Submitted documents

cc: Ms. Barbara Ann Bertin
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(w/o enclosures)