



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 21, 1995

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

OR95-418

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. Your request was assigned ID# 33314.

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

1. All test summary reports issued by any testing laboratory contracted by the City of Houston relating to liner thickness tests on all sewer rehabilitation projects since January 1, 1994.
2. A document detailing payments to all wastewater contractors for sewer rehabilitation projects in the City of Houston since January 1, 1994.

The city contends that the requested records 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.

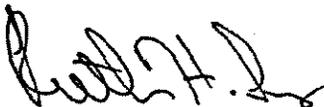
You have submitted to this office for review a copy of the documents at issue. You also submitted an affidavit from Gail P. Johnson, the attorney representing the city in regard to the sewer rehabilitation projects, which details the city's reasons for anticipating litigation. Based upon the information supplied this office, we agree that the

documents at issue are related to the subject of reasonably anticipated litigation. Since the city has met its burden of showing that litigation is reasonably anticipated and that the documents are related to that litigation, the information at issue may be withheld from disclosure.

In reaching this conclusion, we assume that the opposing parties to the anticipated 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, 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. 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. 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,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref: ID# 33314

Enclosures: Submitted documents

cc: Mr. Wayne Dolcefino
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P.O. Box 13
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(w/o enclosures)