



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1995

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

OR95-501

Dear Ms. Briggs:

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# 33317.

The City of Houston, (the "city") received an open records request for a copy of a 9-1-1 audio tape of a call related to an incident on April 15, 1995, between 3:00 a.m. and 5:00 a.m. at the Bayou Park Apartments. The 9-1-1 audio tape and an affidavit from a Harris county assistant district attorney are submitted for our review. The affidavit informs us that the 9-1-1 tape relates to a case presently set for arraignment with prosecution pending. You claim that the information is excepted from disclosure by section 552.103 of the Government Code, commonly referred to as the litigation exception.

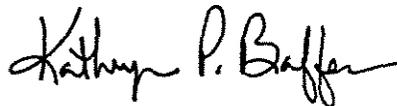
Section 552.103(a) excepts from public disclosure information that relates to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party. Section 552.103(a) was intended to prevent the use of the Act as a method of avoiding the rules of discovery used in litigation. Attorney General Opinion JM-1048 (1989) at 4. For information to be excepted from public disclosure under section 552.103(a), litigation must be pending or reasonably anticipated and the information must relate to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Whether litigation is anticipated is determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. Section 552.103(a) requires concrete evidence that litigation is realistically contemplated; it must be more than mere conjecture. Attorney General Opinion JM-266 (1984) at 4;

Open Records Decision Nos. 518 (1989), 328 (1982). Once the governmental body has shown that litigation is pending or anticipated, the governmental body must then explain how the information requested is related to the subject of the litigation. Open Records Decision Nos. 588 (1991), 551 (1990) at 5. After reviewing the audio tape submitted, we conclude that you have made the requisite showing that the requested 9-1-1 audio tape relates to reasonably anticipated litigation for purposes of 552.103(a). The requested records may therefore be withheld.

We note that if the opposing parties in the anticipated litigation have seen or had access to any of the information in the audio tape, 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).

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# 33317

Enclosure: Submitted audio tape

cc: Ms. Lisa Christian Walker
Legal Secretary
Friedman & Gold
Five Post Oak Park, Suite 1800
Houston, Texas 77027
(w/o enclosure)