



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 28, 1995

Ms. Y. Quiyamah Taylor
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-545

Dear Ms. Taylor:

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# 32570.

The City of Houston (the "city") received a request for information relating to various traffic projects proposed by the city, including the opening and closing of some city streets. 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.

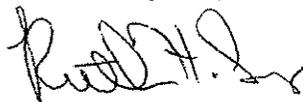
You have submitted to this office information showing that complaints about the proposed traffic projects are currently under investigation by the United States Department of Housing and Urban Development ("HUD"). HUD has notified the city that the complaints being investigated were filed pursuant to title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and section 109 of the Housing and Community Development Act of 1974, 24 C.F.R. § 570. The attorney representing the city in the investigation contends that litigation is reasonably anticipated because HUD is conducting an ongoing, "systemic investigation" of the city's traffic projects. The city's attorney also states that litigation is a remedy provided for under federal law. We agree that the city has met its burden of showing that litigation is reasonably anticipated. Our review of the records at issue, which were submitted to this office, shows that the records are related to the anticipated litigation.

However, we note that the requestor asked for information including minutes and other documents that are part of the record of public meetings and hearings. Your contention is that all of the requested information is excepted from disclosure pursuant to section 552.103(a). However, information adopted or disclosed during a public meeting or hearing may not be withheld from disclosure under section 552.103(a). See Open Records Decision Nos. 551 (1990) at 2-3, 221 (1979) at 1 ("official records of the public proceedings of a governmental body are among the most open of records").

The other information at issue may be withheld from disclosure to the extent that the opposing parties to the anticipated litigation have not already had access. Absent special circumstances, once information has been obtained by all parties to the anticipated 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. 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. We note that as to official records of public proceedings, the city may rely on this ruling as a prior determination under section 552.301 of the Government Code. This ruling otherwise 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 the 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# 32570

Enclosures: Submitted documents

cc: Mr. Harold L. Barbin
7007 Northampton Way
Houston, Texas 77055
(w/o enclosures)