



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 28, 1995

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

OR95-1023

Dear Mr. Gervais:

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# 35600.

The City of Galveston (the "city") received a request for information concerning an application by D& P Wrecker Service ("D& P") to be put on city rotation.¹ You assert that responsive information is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

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 submitted a petition showing that A&A Wrecker Service ("A&A") and D&P are involved in pending litigation against the city.² The city has thus met its burden under section 552.103(a).

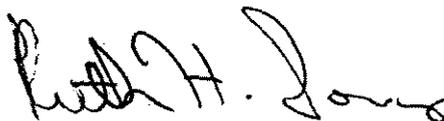
¹We note that the requestor also sought information concerning other wrecker services. Since your objection is to the release of information concerning the D&P application, we assume that the other information has already been provided to the requestor.

²Your letter indicates that A&A and D&P have the same owners.

However, the documents submitted to this office included information already seen by the opposing parties to the litigation. 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. Thus, information the opposing parties in the litigation have already had access to may not be withheld from disclosure. The other documents at issue may be withheld.

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 questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/rho

Ref.: ID# 35600

Enclosures: Submitted documents

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