



Office of the Attorney General  
State of Texas

January 14, 1997

DAN MORALES  
ATTORNEY GENERAL

Mr. Robert J. Gervais  
Assistant City Attorney  
P.O. Box 779  
Galveston, Texas 75553-0779

OR97-0056

Dear Mr. Gervais:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102982.

The City of Galveston (the "city") received a request for all information concerning Pat Johnson, parking enforcement services, the Texas Department of Transportation, and the City of Galveston impound lot. You state that you have released 30 documents to the requestor and will provide him with others. You claim, however, that much of the requested information, including several memoranda and other attorney records, is excepted from required public disclosure by sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and have reviewed the sample documents that you have submitted.<sup>1</sup>

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing 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. The city must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that the city is currently involved in a lawsuit, *Kastis v. Galveston*, No. G-96-226 (S. D. Tex.). After reviewing the submitted material, we conclude that litigation is pending and that the submitted documents relate to the litigation. The city may, therefore, withhold the requested documents.

Generally, however, 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 Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a). Further, 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).<sup>2</sup>

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

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<sup>2</sup>Because we are able to make a determination under section 552.103, we do not address your work product argument or your argument under section 552.107. We note that this office recently decided that if a governmental body wishes to withhold information as "attorney work product," the proper exception to raise is either section 552.103 or section 552.111. Open Records Decision No. 647 (1996). We announced in Open Records Decision No. 647 that a governmental body must show that the work product (1) was created for trial or in anticipation of litigation under the test articulated in *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993), and (2) consists of or tends to reveal the thought processes of an attorney. *Id.* at 5. The governmental body must make both of these demonstrations. We have enclosed a copy of Open Records Decision No. 647 (1996) for your convenience.

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Enclosures: Submitted documents  
Open Records Decision No. 647 (1996)

cc: Mr. Blu Shields  
P.O. Box 2550  
Galveston, Texas 77553-2550  
(w/o enclosures)