



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 17, 1997

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

OR97-0099

Dear Ms. Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103052.

The City of Houston (the "city") received a request for "a copy of any and all information having to do with the complaint against 7303 Long Point." You assert that the requested information is excepted from required public disclosure under sections 552.101, 552.103, and 552.107 of the Government Code.

You first contend that the identity of the complainant may be withheld under the "informer's privilege" aspect of section 552.101. Texas courts long have recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Open Records Act, Open Records Decision No. 549 (1990) at 4. It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 (1988) at 3, 208 (1978) at 1-2. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 (1981) at 2 (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 (1990) at 2, 515 (1988) at 4-5. Where statements evidence no wrongdoing or violation of law, they are not protected by the informer's privilege. Open Records Decision No. 549 (1990). In addition, the informer's privilege protects the content of the communication only to the extent that it identifies the informant. *Rovario v. United States*, 353 U.S. 53, 60 (1957). In this instance, we agree that the identity of the informant and any information that may

identify the informant may be withheld under the informer's privilege and section 552.101 of the Government Code.

You also seek to withhold certain documents under sections 552.103 and 552.111 of the Government Code. When asserting section 552.103(a), the "litigation exception," a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation. Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated, and that (2) the requested information relates to that litigation. *See 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. In this instance, we believe that you have established that litigation is reasonably anticipated and that the requested information relates to that litigation. Consequently, you may withhold these documents under section 552.103 of the Government Code.¹

In reaching this conclusion, however, 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, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). 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). We also note that 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 may 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

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¹As we resolve this portion of our ruling under section 552.103, we need not address your claim for exception under section 552.111.

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Enclosures: Marked documents

cc: Ms. Kathleen S. Holmes, D.C.
Non-Force Chiropractic
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(w/o enclosures)