



February 9, 1999

Ms. Joy Fitzgerald
Executive Director
Housing Authority of the City of Houston
P.O. Box 2971
Houston, Texas 77252-2971

OR99-0397

Dear Ms. Fitzgerald:

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# 122236.

The Housing Authority of the City of Houston (HACH) received a request from Houston City Councilman Orlando Sanchez for information concerning the death of a child at Irvington Village on November 9, 1998. Councilman Sanchez's request is for the following:

Copies of all records pertaining to the gate, including: date installed, name and address of contractor, original specifications, bid bond and any and all maintenance records.

Name and contract number of responsible management parties, either within the HHA or any management firms to which the authority contracts out the Irvington Village property.

You contend that this information is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered the exception you claim and have reviewed a representative sample of the information at issue.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related

to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *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 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

In this case we agree that HACH reasonably anticipates litigation relating to the death on November 9, 1998. We also agree that the information at issue relates to the reasonably anticipated litigation. Thus, HACH may withhold the information from disclosure pursuant to section 552.103 of the Government Code. In reaching this conclusion, however, we assume that the opposing party in the anticipated litigation has not previously had access to the information 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 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 122236

Enclosures: Submitted documents

cc: Mr. Orlando Sanchez
Council Member At-Large, Position 3
Houston City Council
P.O. Box 1562
Houston, Texas 77251-1562
(w/o enclosures)