



July 6, 1999

Ms. Laura S. Portwood
Senior Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR99-1879

Dear Ms. Portwood:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125480.

The City of Houston (the “city”) received a request for access to records related to payment of outside counsel by the city. You have submitted responsive information to this office for review, marked to indicate those portions you contend are excepted from disclosure by sections 552.103(a) and 552.107(1) of the Government Code.¹

Section 552.103(a), the “litigation exception,” excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant facts and documents to 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). In this case, you have supplied documentation that establishes that litigation is pending and that the information bracketed by you relates to that litigation. This information may be withheld under section 552.103(a) of the Government Code.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once

¹ We note that you have not submitted information responsive to all categories of the request. We assume the information not submitted for our review has been made available to the requestor.

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 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).

As the discussion under section 552.103 is dispositive, we shall not address your argument under section 552.107(1) of the Government Code. 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.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 125480

Encl. Submitted documents

cc: Ms. Ann De Rouffignac
Houston Business Journal
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Houston, Texas 77027-9875
(w/o enclosures)