



September 7, 1999

Mr. Darrell G-M Noga
Cooper & Scully
Founders Square
900 Jackson Street, Suite 100
Dallas, Texas 75202

OR99-2490

Dear Mr. Noga:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127775.

The City of Coppell (the "city") received a request for 1) "All documents pertaining to and correspondence with H.U.D.," 2) "All 'Cooperation Agreements' with H.U.D.," 3) "All documentation of communication with H.U.D.," and 4) "All documentation of 'the City of Coppell's exploration efforts into various housing options which would expand the housing opportunities for low-income persons.'" You seek to withhold information responsive to items 1 and 3 of the request under sections 552.103, 552.107, and 552.111 of the Government Code. You advise that documents responsive to items 2 and 4 of the request will be made available to the requestor except to the extent such information is also responsive to items 1 and 3. You have submitted representative samples of the information you seek to withhold.¹

¹In reaching our conclusion, 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 No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

Section 552.103(a) of the Government Code, known as the litigation exception, excepts from required public 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.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). You assert that the information at issue relates to a pending lawsuit against the city, *Jim Sowell Construction Co. et al v. The City of Coppell*, brought in the United States District Court for the Northern District of Texas, Civil Action No. 3-96-CV-0666. Having considered your arguments, copies of pleadings in the above-referenced litigation, and the submitted information, we conclude that the information relates to said litigation and thus generally may be withheld under section 552.103(a).

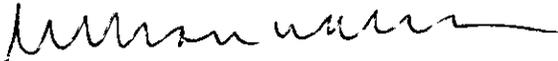
We assume, however, that none of the information at issue has previously been made available to the opposing parties in the litigation. Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent the opposing parties have seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a). Similarly, section 552.103(a) does not authorize the city to withhold materials which have already been made available to the public.² Open Records Decision No. 436 (1986). The applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982).

Since we have disposed of this matter under section 552.103, we need not address your other claimed exceptions to disclosure at this time. 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

²Please note that pleadings and other records filed in court must be released. *Star Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992).

relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 127775

Encl. Submitted documents

cc: Mr. Arthur H. Kwast
P.O. Box 1397
Coppell, Texas 75019-1397
(w/o enclosures)