



September 10, 1999

Ms. Tracy B. Calabrese  
Senior Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR99-2518

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128498.

The City of Houston received a request for information pertaining to the city fire department, including its "rules and regulations." You seek to withhold the requested rules and regulations of the fire department under section 552.103 of the Government Code.

Section 552.103(a), 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.

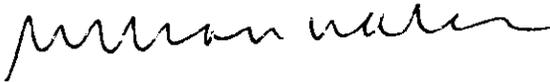
To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. However, absent special circumstances, once information has been obtained by all parties 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, 320 (1982).

Although you argue that litigation is pending to which the information at issue relates, it appears that the information has already been made available to the opposing party in such pending litigation. The fire department's rules and regulations, which you seek to withhold under section 552.103(a), appear to have been designed for the use of fire department

employees. The contemplated opposing party in the litigation, who is also the requestor here, is a former fire department employee who was terminated in March 1999. Thus, the information at issue has presumably already been made available to the contemplated opposing party in the litigation. Consequently, the information in question may be not withheld under section 552.103(a). It must be released.

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,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ch

Ref: ID# 128498

Encl. Submitted documents

cc: Ms. R. Anaicka Ortiz  
Watts & Association  
10333 Harwin Drive, Suite 140  
Houston, Texas 77036-1532  
(w/o enclosures)