THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

April 24, 1990

Mr. Don W. Smith
Assistant City Attorney
City of Pasadena
P.O. Box 672
Pasadena, Texas 77501

OR90-155

Dear Mr. Smith:

You previously asked whether Internal Investigation File No. 219 is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. This file is the record of an internal investigation by the Pasadena Police Department of an officer who was accused of using excessive force. The Internal Affairs Division found the charges to be justified, and the officer apparently was fired. A warrant in the file shows that he was arrested in June of 1988 under authority of the 351st District Court in Harris County upon charges of a civil rights violation, a felony.

Although a governmental body may have an interest in litigation involving a former employee, whether a governmental body can claim that litigation is anticipated with respect to a former employee's conduct cannot be decided as a matter of law. You do not suggest that the city is involved in the criminal prosecution, and in fact one of our staff confirmed in a telephone conversation with your office that the city is in no way assisting the former police officer in his defense. Although the events that gave rise to the criminal prosecution could also provide the basis of a civil suit against the city, you have not provided this office with any information that indicates that a specific person involved in the incident intends to sue the city in connection with this case; you merely state that the statute of limitations has not run out as to this incident and if the internal affairs file were released to the public a potential plaintiff would have access to information which he would not otherwise be able to obtain.

You have not shown a reasonable anticipation of litigation with regard to file No. 219. See Open Records Decision

No. 139 (1976) (enclosed). Because you have not raised any of the act's other exceptions to required public disclosure with regard to this file, you may only withhold information similar to that held to be confidential in Internal Investigation File No. 231; the remaining information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-155.

Yours very truly,

Susan Garrison

Susan Garrison
Assistant Attorney General
Opinion Committee

SG/RWP/le

Ref.: ID# 9211

Enclosure: Open Records Decision No. 139

cc: Lorraine Adams
Dallas Morning News
Communications Center
Dallas, Texas 75202