



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 10, 1994

Mr. Robert E. Hager
Law Offices of Nichols, Jackson, Dillard, Hager
and Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR94-120

Dear Mr. Hager:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 23940.

The City of Coppell (the "city"), which you represent, received an open records request for the following:

Any and all sexual harrasment [*sic*] or sexual misconduct complaints filed by citizens or employees of the City of Coppell City [*sic*] against former Coppell Police Sergeant Ernie Ellsworth. I also respectfully request a copy of any lawsuit filed on Mr. Ellsworth's behalf against the city of Coppell. I would also request a copy of Mr. Ellsworth termination papers.

To the extent that the city possesses the requested records², you contend the records come under the protection of sections 552.101, 552.102(a), 552.103(a), 552.108, and 552.111 of the Government Code.

¹The Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²Because you have not argued that Mr. Ellsworth has filed suit against the city, we assume that the city does not possess "a copy of any lawsuit filed on Mr. Ellsworth's behalf."

Section 552.103(a) of the Government Code 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. Open Records Decision No. 588 (1991) at 1. The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You contend that section 552.103(a) excepts this material from required disclosure because "Officer Ellsworth has . . . threatened legal action relative to this matter." We need not address here whether the evidence you have submitted to this office constitutes "concrete evidence" that the city may reasonably anticipate a lawsuit from Mr. Ellsworth because, assuming *arguendo* that such a lawsuit is imminent, we note that Mr. Ellsworth has had previous access to both the complaint and his "termination papers." Absent special circumstances, once 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, 320 (1982). Consequently, the city may not withhold these records because of any threatened litigation by Mr. Ellsworth.

We note, however, that the city has also received a notice of claim in connection with this matter from the complainant, who, as far as this office can determine, has never had access to the records at issue. Assuming that such is the case, the city may withhold the complaint and "termination papers" pursuant to section 552.103(a) until such time that the city resolves its dispute with the complainant or until these records are provided to her during the discovery process. If the city receives another open records request subsequent to either of these events, it must request another open records decision from this office at that time.³

³Since we resolve this matter under section 552.103(a), we need not address in this ruling your arguments under sections 552.101, 552.102(a), 552.108, and 552.111.

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 contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/RWP/rho

Ref.: ID# 23940
ID# 24044
ID# 24305
ID# 24646

Enclosures: Submitted documents

cc: Mr. Michael Coleman
Reporter
Harte-Hanks Community Newspapers
1712 E. Beltline Road
Carrollton, Texas 75006
(w/o enclosures)