



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 28, 1994

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR94-826

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 28710.

The City of Garland (the "city") has received numerous requests for information relating to an incident in which a small girl was killed when struck by a city police car. One of the requestors seeks "all documents relating to the accident," which occurred on the evening of Saturday, August 13, 1994. Other requestors seek a certain police officer's disciplinary records, recordings of 911 calls, police service reports, copies of all insurance policies held by the city, recordings of radio transmissions, police training materials, and copies of all policies regarding emergency response by city officials. You have submitted some of the requested information to us for review and claim that sections 552.101, 552.103, and 552.108 of the Government Code except it from required public disclosure.

Section 552.103(a) 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

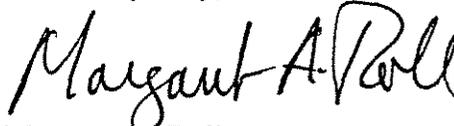
(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

For information to be excepted from public disclosure by section 552.103(a), litigation must be pending or reasonably anticipated and the information must relate 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.); *see also* Open Records Decision No. 551 (1990) at 5. Although section 552.103(a) gives the attorney for a governmental body discretion to determine whether section 552.103(a) should be claimed, that determination is subject to review by the attorney general. Open Records Decision Nos. 551 at 5; 511 (1988) at 3. The purpose of section 552.103(a) is to prevent the use of the Open Records Act as a means to circumventing the discovery process. Open Records Decision No. 551.

We understand that one of the requestors has filed suit against the city. The suit alleges violations of constitutional rights, negligence, and the reckless operation of a motor vehicle. Accordingly, we conclude that the city is a party to pending litigation. Having examined the information submitted to us for review, we agree with your assessment that the submitted information relates to the pending litigation. Accordingly, the city may withhold the requested information under section 552.103(a) of the Government Code.¹ As we resolve this matter under section 552.103(a), we need not address the applicability of the other claimed exceptions 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 may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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Ref.: ID# 28710

Enclosures: Submitted documents

¹The requestors seek two offense reports: one involving the accident now the subject of litigation, the other involving the incident to which the defendant police officer was driving when he struck the child. We note that the city must release these offense reports to the extent that they include information generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision Nos. 597 (1991); 127 (1976).

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