



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1995

Ms. J. Sage White
Assistant City Attorney
Department of Law
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR95-734

Dear Ms. White:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32616.

The City of Austin (the "city"), through its police department and its civil service section, received an open records request for, among other things, a particular police officer's "law enforcement background, previous work experience, and performance reviews."¹ Additionally, the requestor seeks a record of all traffic tickets issued by this officer during the last thirty days. We note that you have made no argument for withholding information about the traffic tickets issued by the officer during the last thirty days, therefore, we assume that you have released this information to the requestor if such information exists. You have submitted for our review documents which you contend are responsive to the request. We note however, that many of the documents you have submitted are not responsive to the request and, consequently, we do not

¹The city is a civil service city subject to chapter 143 of the Local Government Code. Pursuant to section 143.089 of the Local Government Code, the city may maintain two personnel files on its police officers. We assume that the information requested is all located in the officer's personnel file described by section 143.089(a), commonly referred to as the civil service file. Generally, the information contained in a police officer's civil service personnel file may be released without the officer's written permission if the Open Records Act requires disclosure of the information. See Open Records Decision No. 562 (1990) at 6.

address them. You inform us that the requestor received a traffic ticket from the police officer about whom he requests information on March 13, 1995. You state that the records requested relate to the personal and work history of the officer who is the primary state's witness against the requestor and who will testify at trial. You contend that, because the officer is the state's primary witness against the requestor, that the information requested may be withheld from disclosure pursuant to section 552.103.

Section 552.103(a) applies to 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 show that section 552.103 is applicable, the city must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Section 552.103 requires concrete evidence that the claim that litigation may ensue is more than mere conjecture. Open Records Decision No. 518 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. After reviewing the submitted documents, we conclude that you may withhold the requested information pursuant to section 552.103(a).

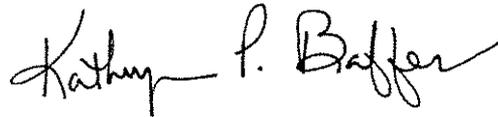
Generally, once information has been obtained by all parties to the litigation through discovery or otherwise, or the litigation has ended, no section 552.103 interest exists with respect to that information.² Open Records Decision Nos. 349 (1982), 320 (1982).

We are resolving this matter with this 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.

²We note that there may exist information in the responsive documents that must be withheld pursuant to various statutory confidentiality provisions even after discovery and after the litigation is completed.

If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Kathryn P. Baffes". The signature is written in a cursive style with a large, stylized initial 'K'.

Kathryn P. Baffes
Assistant Attorney General
Open Government Section

KPB/RHS/rho

Ref: ID# 32616

Enclosures: Submitted documents

cc: Mr. Kevin Mac Donnell
MacDonnell Rare Books
9307 Glenlake Drive
Austin, Texas 78730
(w/o enclosures)