



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 14, 1995

Mr. G. Chadwick Weaver
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR95-952

Dear Mr. Weaver:

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# 34153.

The City of Midland (the "city") received a request for the following documents concerning the death of Joe Dale Faglie:

1. A copy of policeman Edwards' statement.
2. A copy of policeman Mintz's statement.¹
3. A copy of all 911 calls made that night.²
4. A copy of statements made by witnesses.
5. A copy of any test results for LSD in body.
6. A copy of statements made by Christine and Dawn Faglie.

¹You state that none of the officers involved in this incident is named "Mintz." However, one of the officers involved in the shooting is named "Hintz" and you assume that the requestors are seeking Officer Hintz's statement.

²You also assume that the requestors are seeking only the 911 calls made concerning the shooting of Mr. Faglie and have informed the requestors of that fact.

7. Videotape and pictures of the event.

You claim that the requested information is excepted from disclosure under sections 552.103(a), 552.117, and 552.101 of the Government Code. You have submitted copies of the information requested.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing 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. The city must meet both prongs of this test for information to be excepted under 552.103(a).

You state that the family of the deceased retained an attorney two days after the shooting. The attorney has stated in a newspaper article that there is "a serious question as to whether the officer involved was justified in his use of deadly force against Mr. Faglie" and that this "issue will be resolved at a later date." We have previously held that litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it--unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982). This office has concluded that litigation is reasonably anticipated when an attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming, and when a requestor hires an attorney who threatens to sue a governmental entity. Open Records Decision Nos. 555 (1990), 551 (1990). We understand that the city has not received any demands from the requestors' counsel or been served with papers. Where a requestor publicly states on more than one occasion an intent to sue, that alone does not trigger section 552.103(a). Open Records Decision No. 452 (1986); *see* Open Records Decision No. 361 (1983) (fact that request for records made by attorney not enough to trigger 552.103(a)). In light of the circumstances, we cannot conclude that litigation is reasonably anticipated. Therefore, the documents are not excepted from disclosure by section 552.103(a).

You also claim that section 552.117 excepts the home address and home telephone number of one of the police officers. We agree with the markings the city has made on the officer's statement to except this information from disclosure.

You next claim that section 552.101 excepts the names and other identifying information of minor witnesses. Section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

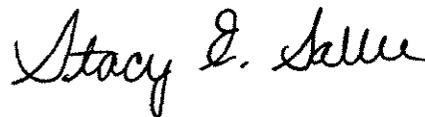
Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

Section 552.101 also excepts information that is confidential under constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: 1) the right to make certain kinds of decisions independently, and 2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress); 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982); *see also infra* discussion of sexual harassment investigations. We conclude that the identities of these juvenile witnesses are not excepted from disclosure under either a common law or constitutional right of privacy. Therefore, the city may not withhold their identities. *See* Open Records Decision No. 611 (1992).

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Government Section

Ref.: ID# 34153

Enclosures: Marked documents

cc: Alvin and Shirley Faglie
5209 Belaire
Midland, Texas 79703
(w/o enclosures)