



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 11, 1995

Mr. John L. Munn  
Cooper & Aldous, P.C.  
1999 Bryan Street, Suite 2300  
Dallas, Texas 75201

OR95-1399

Dear Mr. Munn:

You ask whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. Your request was assigned ID# 35553.

The City of Richardson (the "city") received an open records request for "any and all performance records, internal affairs investigation records, qualification records, personnel records, criminal charges, civilian complaints, whether or not substantiated, all records pertaining to all disciplinary actions, whether or not action was taken" pertaining to a particular officer of the city's police department. You contend that various exceptions set forth in chapter 552 of the Government Code allow you to withhold from required public disclosure the requested information. Among the exceptions you urge is section 552.103(a), commonly referred to as the litigation exception. You inform us that, the information requested is related to a lawsuit that is pending currently in the United States District Court for the Northern District of Texas, Dallas Division. You have submitted for our review a copy of the complaint filed in this lawsuit as well as the responsive documents. Consequently, you have shown that litigation is pending.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that most of the requested information relates to pending litigation. Consequently most of the information submitted may be withheld from required public disclosure pursuant to section 552.103. Additionally, some of the information submitted for our review is confidential by law and is excepted from required public disclosure pursuant to section 552.101.<sup>1</sup> Also, some of the information requested may be excepted from required disclosure pursuant to section 552.117 of the Government Code.<sup>2</sup>

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<sup>1</sup>Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. The information submitted for

In your letter to this office, you state that "none of the requested information has been made available to the requestor or his client." In reviewing the submitted documents we note that several documents may in fact have been seen by the requestor's client. Some of the documents were signed by the plaintiff. Additionally, we assume that the plaintiff in the pending civil litigation, who was arrested, will have either seen or had access to information such as that listed in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975, writ *ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976), and catalogued in Open Records Decision No. 127 (1976). Once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). There exists no justification for now withholding information that the requestor has seen or had access to pursuant to section 552.103(a). See Open Records Decision No. 597 (1991) at 3. Finally, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In reviewing the information submitted to this office, it appears that some of the information may be located in public court records. We note that if any of the information requested appears in public court records it is not protected and would be available to the opposing party in the litigation. See *Star Telegram v. Walker*, 836 S.W.2d 54 (Tex. 1992) (no privacy interest in information found in public court documents). We also note that the submitted documents contain search warrants and a search warrant affidavit. These documents are open to the public pursuant to section 18.01 of the Code of Criminal Procedure. Consequently, these documents, which we have marked with blue tabs, must be released to the requestor.

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(Footnote continued)

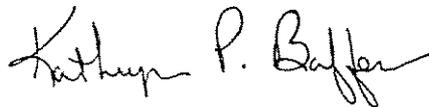
our review contains references to social security numbers. Federal law may prohibit disclosure of the social security numbers included in this request for records. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with 1990 amendments to the federal Social Security Act, § 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994).<sup>1</sup> Based on the information you have provided, we are unable to determine whether the social security numbers at issue are confidential under this federal statute. We note, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, the city should ensure that the information is not confidential under this federal statute. We have marked other types of information that are confidential by law, and therefore, are excepted from disclosure by section 552.101.

<sup>2</sup>Section 552.117 excepts from required public disclosure information relating to the home telephone number and home address of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. From the information submitted, we cannot determine whether the former city police officer is currently a peace officer as defined by article 2.12. If the former city police officer is currently a peace officer within the definition set forth in article 2.12 then you must withhold his home address and home telephone number. However, if the former city police officer is not currently a peace officer as defined by article 2.12 of the Code of Criminal Procedure then you must release this information to the requestor.

We have marked with yellow tabs the information that the city may withhold pursuant to section 552.103(a) as well as information that is confidential by law that the city must withhold. The remaining information must be released to the requestor.

Since we have resolved this request pursuant to sections 552.103, 552.101, and 552.117, we do not address your arguments urging other exceptions to required public disclosure under chapter 552 of the Government Code. 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. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes  
Assistant Attorney General  
Open Records Division

KPB/rho

Ref: ID# 35553

Enclosures: Marked documents

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