



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 13, 1996

Mr. John Steiner  
Division Chief  
Department of Law  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-2268

OR96-0176

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38138.

The City of Austin (the "city") received a request for copies of "any and all documents related to the auditors [sic] investigation of [an individual], et al.[,] at the T.V. inspection division." You claim that the requested information is excepted from required public disclosure under sections 552.103, 552.107, and 552.111 of the Government Code.

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 section 552.103(a).

You state that, as a result of the investigation, the named individual's employment was terminated. You also forwarded a copy of a letter written by this individual in which certain accusations are made against other city employees. Section 552.103 requires

concrete evidence that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 518 (1989), 328 (1982). We conclude that you have not met your burden of showing that litigation is reasonably anticipated in this instance. Accordingly, you may not withhold the requested information pursuant to section 552.103 of the Government Code.

You claim that a handwritten agenda of a meeting with a representative of the law department and a flowchart are excepted from required public disclosure by section 552.107 of the Government Code. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We find that the agenda reveals the client's confidential communications and, therefore, may be withheld under section 552.107. However, the flowchart is purely factual and may not be withheld under this exception.

You also claim that certain documents are excepted from required public disclosure by section 552.111 of the Government Code. Section 552.111 excepts "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office concluded that section 552.111 excepts from required public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* You claim that the investigation is not a personnel matter but "involves policy making regarding the investigation of the TV Repair Shop." We disagree. The information you seek to withhold focuses on a particular investigation of a particular employee and clearly relates to an internal administrative or personnel matter. Consequently, you may not rely on section 552.111 to withhold any of the requested information.

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

Yours very truly,

A handwritten signature in black ink that reads "Todd Reese". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/ch

Ref: ID# 38138

Enclosures: Submitted documents

cc: Mr. Greg Powell  
Business Manager  
American Federation of State, County, and  
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(w/o enclosures)