



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 5, 1996

Ms. Amy McCullough
Pearland City Attorney
3519 Liberty Dr.
Pearland, Texas 77581

OR96-0294

Dear Ms. McCullough:

Mr. Richard Gregg, Jr., your predecessor as city attorney for the City of Pearland (the "city"), asked whether certain information is subject to required public disclosure under the Texas Open Records Act ("the act"), chapter 552 of the Government Code. The request was assigned ID# 23825.

The city's chief of police received a request for the following information:

Any and all documents and writings of every type and from any source, including original and non-identical copies thereof, that are in your possession, custody, or control or known by you to exist which concern, pertain, mention, or are any way related to Joy Niday Colson, Benny Frank, or Deloss A. Miller, Jr.

According to Mr. Gregg, the city has released some information, but the city claims that certain information is excepted from required public disclosure based on sections 552.101, 552.103, 552.108, and 552.111 of the act.¹ The documents responsive to this request have been submitted to this office for our review.

¹We note that Mr. Gregg did not specifically raise section 552.103. However, because he generally described the related criminal and civil actions pending at the time of the request and because he enclosed copies of the Plaintiffs' Third Amended Original Petition and Application for Temporary Injunction and Plaintiffs' First Supplemental Petition to Plaintiffs' Third Amended Original Petition and Application for Temporary Injunction in his letter seeking a ruling from this office, we conclude that, in this instance, section 552.103 was adequately raised. We note, also, that Mr. Gregg did not raise section 552.101. Rather, the police chief, in his cover brief attached to the responsive documents you seek to

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). You have recently informed us that the litigation between Joy Niday Colson and numerous defendants, including the city secretary and Mayor of Pearland, is still pending and we have reviewed the documents at issue in this matter. In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a); the requested records may therefore be withheld.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, 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). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We note also that 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).

Having concluded that the city may withhold the requested information from required public disclosure under section 552.103(a), we need not address the applicability of the other exceptions you raise. 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 regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Todd Reese
Assistant Attorney General
Open Records Division

RTR/ch

Ref.: ID# 23825

(Footnote continued)

withhold, timely raised section 552.101. Accordingly, we conclude that section 552.101 is also adequately raised.

Enclosures: Submitted documents

cc: Mr. Darrell M. Minton
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12 Greenway Plaza, Suite 1202
Houston, Texas 77046
(w/o enclosures)