



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 18, 1996

Ms. Marva M. Gay
Assistant County Attorney
Harris County
1001 Preston, Ste. 634
Houston, Texas 77002-1891

OR96-0349

Dear Ms. Gay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38849.

You state that Harris County ("the County") received a request for information asking for

any and all information in the Harris County Constable's files concerning any applications, training accommodations, reprimands, complaints, grievances or disciplinary actions pertaining to Precinct Four Officer Robert L. Norris #04257, for the period from January 1991 to the present date, including any and all information regarding all internal investigations of such complaints, the final determination of such complaints, and copies of any and all letters advising of disciplinary action regarding such complaints.

You claim that the requested information is exempted from required public disclosure under sections 552.103(a) and 552.117 of the Government Code. You have submitted for our review the documents that you believe are responsive to the information request.

To show that section 552.103(a) is applicable, the county 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 litigation may ensue. To demonstrate that litigation is reasonably anticipated, the county must furnish evidence that litigation is

realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

Your request refers to "pending trials," but you have neither identified the parties to the litigation nor informed us of the issues raised by the potential litigation. You claim that the requestor in this instance is an attorney who represents criminal defendants, and plans to use the requested information "to circumvent the discovery process in pending or anticipated litigation" and "to discredit the officers." You have not, however, identified any specific litigation now pending. Without knowing the details of the "pending litigation," we are unable to determine whether there is actual litigation or whether the information before us is related to that litigation. Further, the Open Records Act prohibits consideration of the motives of the requesting party. Open Records Decision Nos. 542 (1990), 508 (1988). You have not met your burden under section 552.103; therefore, you cannot withhold the requested information pursuant to section 552.103.

You additionally claim that certain information contained within the submitted documents is excepted from public disclosure by Section 552.117 of the Government Code. Section 552.117 provides that information may be withheld if it is

information that relates to the home address, home telephone number, social security number, or that reveals whether the following person has family members:

* * * *

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.

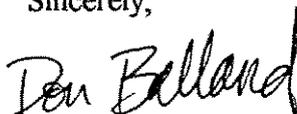
Since Section 552.117 excepts from required disclosure peace officers' home addresses, home telephone numbers, social security numbers, and information revealing whether the officers have family members, this information must be withheld from disclosure. CODE CRIM. PROC. art. 2.12(2) (deputy constables are "peace officers"); Open Records Decision Nos. 532 (1989), 530 (1989).

We also note that some of the information submitted for our review does not appear to be responsive to the request for information. We have marked the apparently unresponsive information; we do not rule here on the disclosure of this information. Furthermore, some of the information submitted for our review is confidential by law and is, therefore, excepted from required public disclosure pursuant to section 552.101. Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. We have marked one document as an example of the information that is confidential by law, and therefore, excepted from disclosure by section 552.101. We caution that the records submitted to this office for review may contain other information deemed confidential by law which should not be made public. See Open Records Decision No. 195 (1978). See

also Gov't Code § 552.352 (distribution of confidential information is criminal offense). We have included for your review a sampling of common types of information deemed confidential.

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.

Sincerely,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 38849

Enclosures: Submitted documents
List of Confidential Information

cc: Mr. Richard L. Moore
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(w/o enclosures)