



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 8, 1996

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

OR96-0681

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# 39714.

The City of Austin (the "city") received a request for information seeking documents concerning the discipline, suspension, probation, reprimand, or demotion of a police officer employed by the Austin Police Department, Jeffrey Stone. You claim that the information is excepted from required public disclosure by sections 552.101 and 552.103 of the Government Code. You have submitted for our review the documents responsive to the request for information.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

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 department must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state and have shown that the city is currently involved in a pending indecency with a child action against Leo Coria in which Officer Stone will be the primary state witness. You have also shown that Officer Stone participated in the investigation in this case. We conclude that litigation is pending and that the information at issue is related to that litigation. You may withhold the requested documents pursuant to section 552.103.

We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, 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).

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# 39714

Enclosures: Submitted documents

cc: Mr. David A. Sheppard
Attorney at Law
2414 Exposition Blvd., D-210
Austin, Texas 78703
(w/o enclosures)