



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 12, 1996

Mr. Jason C. Marshall
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza 500 North Akard
Dallas, Texas 75201

OR96-0924

Dear Mr. Marshall:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39856.

The City of Coppell (the "city") received three requests for information seeking documents concerning the termination of a city police officer. You claim that the requested information is excepted from required public disclosure under section 552.103(a) of the Government Code. You have submitted the documents responsive to the request for information.

Section 552.103(a) of the Government Code 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.

To show that section 552.103(a) is applicable, the city 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 department 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.

In this instance, you assert that the city is currently involved in "whistle blower" litigation against the former police officer. You have provided this office with the pleadings in that case, *Cantrell v. City of Coppell, et al.*, No. 94-50280-367 (367th Dist. Ct., Denton County, Tex.). We conclude that litigation is pending. You have not shown, however, how or why the requested information at issue relates to the pending litigation. Open Records Decision No. 638 (1996) at 4. The documents may not, therefore, be withheld pursuant to section 552.103.

Notwithstanding our decision under section 552.103, we note that there is some information within the requested material that is confidential and should not be released. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. In this case, you inform us that the requested information concerns a city police officer. Section 552.117 of the Government Code provides that information is excepted from required public disclosure 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.

Section 552.117 excepts from required disclosure Officer Cantrell's home addresses, home telephone numbers, social security numbers, and information revealing whether the officer has family members. Therefore, this information must be withheld from disclosure. Code Crim. Proc. art. 2.12(3) (city police officers are "peace officers"); Open Records Decision Nos. 532 (1989), 530 (1989); *see also* Open Records Decision No. 622 (1994) (former address and telephone numbers also excepted by Gov't Code § 552.117).

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

Mr. Jason C. Marshall - 3

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,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 39856

Enclosures: Submitted documents

cc: Mr. Arthur H. Kwast
P.O. Box 1397
Coppell, Texas 75019
(w/o enclosures)

12

