



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1996

Mr. Terrence S. Welch
Vial, Hamilton, Koch & Knox, L.L.P.
1717 Main Street, Suite 4400
Dallas, Texas 75201

OR96-1358

Dear Mr. Welch:

On behalf of the Town of Flower Mound (the "town"), 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# 100488.

The town received a request for "[a] copy of the original offense report(s) including a missing persons report and an unauthorized use of a motor vehicle filed in connection with Mary Elizabeth Womack. Date of Offense is November 23, 1995." You assert that the town may withhold the requested information from required public disclosure based on section 552.103 of the Government Code.

Section 552.103(a) applies to 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 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. 588 (1991). You assert that the requested information relates to pending litigation, *Teague v. City of Flower Mound*, Cause No. 396CV1068-P in the United States District Court for the Northern District

of Texas. We have reviewed the petition in that case. We agree that the requested information relates to the pending lawsuit. However, in this case, you state that the opposing parties have obtained copies of the requested reports. In situations in which the opposing parties in the litigation have seen or had access to requested information, 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). Accordingly, we conclude that the town may not withhold the requested information based on section 552.103.¹

We are resolving this matter with this 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.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 100488

Enclosures: Submitted documents

cc: Ms. Dawn Cobb
Managing Editor
Lewisville News
131 West Main Street
Lewisville, Texas 75067
(w/o enclosures)

¹You inform us that you believe that the requested documents were improperly removed from the town's police department. Ordinarily, a governmental waives a discretionary exception to disclosure by releasing requested information. See Gov't Code § 552.007 (prohibiting selective disclosure of requested information). However, where, as here, a release was through no official action and against the governmental body's wishes and policy, we do not believe the Open Records Act precludes a governmental body from invoking an exception to disclosure. See Open Records Decision No. 387 (1983). Thus, we do not believe the town waived section 552.103, but under the facts presented to us the exception is not applicable.