



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 5, 1996

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR96-1390

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40647.

Travis County (the "county") received a request for information relating to "any and all Internal Affairs investigations on D. Downes, a former Deputy with the Travis County Sheriff's Department." The county has three internal affairs files that are responsive to the request. You contend that portions of these files are excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code.¹ You have submitted to this office the portions of the files, labeled exhibits A through D, that you contend are excepted from disclosure.²

¹Although you initially claimed that some of the information at issue is excepted from disclosure under section 552.119, you subsequently notified us that you no longer wish to invoke section 552.119. Therefore, we do not address your section 552.119 claim.

²You have submitted all information from the first and second files that you contend is excepted from disclosure. However, because the third file contains a voluminous quantity of information, you have submitted only a representative sample of information from the third file. We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You assert that exhibits A, B, and C are excepted from disclosure under section 552.103 of the Government Code. Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show 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. You have referenced pending litigation, *Wiese v. Travis County Sheriff's Department*, No. A-95-CA-643-SS (W.D. Tex., Mar. 1, 1996) and demonstrated how the information in exhibits A, B, and C relates to that litigation.

However, once all parties to litigation have gained access to the information at issue, through discovery or otherwise, section 552.103(a) is no longer applicable. Open Records Decision Nos. 551 (1990), 454 (1986). Further, once the litigation has concluded, section 552.103(a) is no longer applicable. Open Records Decision No. 350 (1982). It appears that all parties to the pending litigation have had access to exhibits A and B in their entirety and to a number of documents contained in exhibit C. If this is in fact the case, you may not withhold exhibits A and B from disclosure under section 552.103, and you may only withhold exhibit C from disclosure under section 552.103 to the extent that all parties to the litigation have not had access to it. We have marked the portions of exhibit C to which all parties to the litigation may have had access. If all parties to the litigation have not had access to the information in exhibits A and B and the marked portions of exhibit C, you may withhold this information from disclosure under section 552.103. Of course, you may withhold the unmarked information in exhibit C from disclosure under section 552.103, as all parties to the litigation apparently have not had access to this information.

As section 552.103 does not appear to protect the information contained in exhibits A and B and may not protect all information contained in exhibit C, we must determine whether this information is protected from disclosure by any of the other exceptions to disclosure that you have claimed. We have considered your arguments that this information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code, and we conclude that neither of these exceptions is applicable to this information. Thus, any information contained in exhibits A, B, or C to which all parties to the pending litigation have previously had access must be released to the requestor.

Finally, you contend that the highlighted portion of exhibit D is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ) and held that section 552.111 excepts only those internal

communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. The highlighted portion of exhibit D relates to administrative and personnel matters of the Sunset Valley Police Department and, therefore, is not excepted from disclosure under section 552.111. You must release exhibit D in its entirety to the requestor.

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.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/rho

Ref.: ID# 40647

Enclosures: Marked documents

cc: Mr. Russell Ramirez
Attorney at Law
316 W. 12th, Suite 210
Austin, Texas 78701
(w/o enclosures)