



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 14, 1996

Ms. Guadalupe Cuellar
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR96-2101

Dear Ms. Cuellar:

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# 102092.

The City of El Paso (the "city") received a request to review "files kept by the City Inspection Department related to the properties owned by Brian Haggerty . . . This request includes inspection reports, citations, prosecutors' worksheets and correspondence between Haggerty, and/or the real estate company, and city officials." You assert that the requested information is excepted from required public disclosure based on sections 552.103 and 552.108 of the Government Code.

Section 552.103(a) of the Government Code excepts from required public 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 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 or to settlement negotiations. Open Records Decision No. 588 (1991). You inform us that the city filed a criminal complaint against Rose and Brian Haggerty and that the city prosecutor and the Haggertys are negotiating a settlement of that complaint. You assert that section 552.103 applies in this instance because the requested information relates to these settlement negotiations. We agree that the city may withhold from public disclosure the witness information, the prosecutor's complaint worksheet and the letter dated June 12, 1996 to Mr. Edward W. Dunbar pursuant to Government Code section 552.103. As Ms. Haggerty has had access to the March 12, 1996, letter to her from H.M. Fleming, Assistant City Attorney, informing her of the complaint, the city may not withhold that letter from disclosure pursuant to section 552.103.¹ Cf. Open Records Decision Nos. 349 (1982), 320 (1982) (§552.103 not applicable to information seen by opposing party in pending litigation). You say enclosure 6 consists of "[l]etters between various attorneys for different parties, to include an attorney representing Haggerty's interests, that discuss the various Housing Code violations of property that the Haggertys have an interest in." We have reviewed the documents. None of them appears to discuss property code violations existing at the property that is the subject of the complaint, 4426 Sunrise, although one document contains a discussion of public inspection mandated repairs at other property that the Haggertys do not appear to own. You have not explained how the information in enclosure 6 relates to the pending complaint. Accordingly, we cannot conclude that section 552.103 applies to enclosure 6.

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution. Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). The type of information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976).

We believe the March 12, 1996, letter to Ms. Haggerty from H.M. Fleming, Assistant City Attorney, informing her of the complaint, is front-page offense report information to which section 552.108 does not apply. Nor do we believe section 552.108 applies to enclosure 6, as you have failed to explain the relevance of that information to the pending complaint.

¹The 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).

However, we believe most of enclosure 6 is excepted from public disclosure based on Government Code section 552.101, which excepts from disclosure information that is confidential by law. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. Of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* We believe that with the exception of a small portion of information we have marked enclosure 6 is private financial information that the city must withhold from disclosure based on section 552.101. *See* Open Records Decision No. 600 (1992).

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# 102092

Enclosures: Marked documents

cc: Ms. Paula Moore
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(w/o enclosures)