



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 20, 1997

Ms. Felicia L. Wasson
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
Municipal Building
Dallas, Texas 75201

OR97-1158

Dear Ms. Wasson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 106327.

The Dallas Police Department (the "department") received an open records request for the following records pertaining to a named police officer:

1. All records pertaining to the department's investigation into any allegations of misconduct against the officer;
2. All documents pertaining to the department's investigation of allegations that the officer used excessive force against another named individual;
3. Documents showing the dates the named officer was suspended from active duty or placed on probation;
4. Documents showing the dates and results of all "investigatory meetings" involving the officer; and
5. Any departmental record showing the officer's status with the department or reason for being absent from work on October 18, 1994.

You contend the requested information is excepted from required public disclosure by sections 552.102 and 552.103 of the Government Code.

Section 552.102(a) protects

information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982). *See also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

The information at issue pertains solely to the police officer's actions while acting as a public servant, and as such cannot be deemed to be outside the realm of public interest. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Section 552.102 was not intended to protect the type of information at issue here. The department may not withhold any of the requested information pursuant to section 552.102.

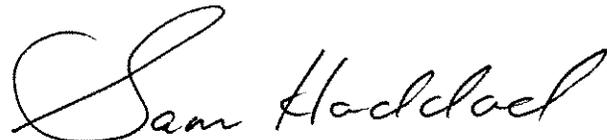
To secure the protection of section 552.103 of the Government Code, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You contend that the requested information relates to reasonably anticipated civil litigation against the department because the open records request, which was filed by an attorney, was preceded by a citizen's complaint that the officer in question used excessive force while serving a citation for failure to identify. The protection of section 552.103 is not triggered merely by the fact that an attorney has requested information on behalf of an individual who may have a potential claim against the governmental body. *Compare* Open Records Decision No. 361 (1983) (mere fact that request for information is made by attorney on behalf of rejected applicant not sufficient to invoke "litigation exception") *with*

Open Records Decision No. 452 (1986) ("litigation exception" properly invoked where attorney makes written demand for disputed payments and promises further legal action if payments not forthcoming). You have not met your burden in demonstrating that litigation is reasonably anticipated in this instance. Section 552.103 therefore does not apply to the requested records.

Because you have raised no applicable exception to the information at issue, we conclude the department must release the requested records in their entirety. 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,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/RWP/rho

Ref.: ID# 106327

Enclosures: Submitted documents

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(w/o enclosures)

