



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 9, 1997

Mr. Claud H. Drinnen  
First Assistant City Attorney  
City of Amarillo  
Legal Department  
P.O. Box 1971  
Amarillo, Texas 79105-1971

OR97-1322

Dear Mr. Drinnen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106582.

The City of Amarillo (the "city") received a request for certain records from the civil service personnel file of a named police officer. You assert that the information at issue is excepted from disclosure pursuant to section 143.089(f) of the Local Government Code. You also assert that the requested information is excepted from disclosure pursuant to sections 552.102, 552.103, and 552.117 of the Government Code. You have submitted to this office for review representative samples of information responsive to the request.<sup>1</sup>

Section 552.103 excepts from required public disclosure information relating to litigation "to which the state or political subdivision is or may be a party." 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. 551 (1990). The city has received a notice of claim from an attorney who claims that his client "will be claiming compensation for personal injuries, medical expenses, denial of civil and constitutional rights" for injuries she allegedly sustained as a result of acts of the named police officer. In this instance, you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). The requested records may therefore be withheld.

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special

---

<sup>1</sup>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 No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

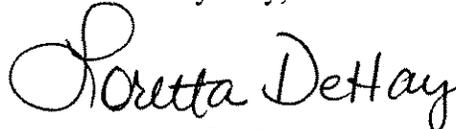
circumstances, once information has been obtained by all parties to the litigation no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

The requestor states that he requests only information maintained in the officer's civil service personnel files as required by section 143.089(a) of the Local Government Code. The requestor further argues, relying on the decision in *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), that such information may not be withheld under an exception to disclosure under Chapter 552 of the Government Code. In *City of San Antonio*, the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949. In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action, as well as commendations and periodic evaluations in the personnel files maintained under section 143.089(a). Such records are subject to the Open Records Act (the "act"). *City of San Antonio*, 851 S.W.2d at 949.

We have reviewed the court's decision in that case and are unable to find support for the requestor's arguments that a governmental body cannot withhold section 143.089(a) personnel records pursuant to a discretionary exception under the act. Furthermore, in Open Records Decision No. 562 (1990) at 8, this office specifically concluded that information in a police officer's civil service personnel file can be withheld if it falls within a specific exception provided for in the act. Therefore, the city may withhold the police officer's personnel files under section 552.103 of the Government Code.<sup>2</sup>

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,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

---

<sup>2</sup>Because we conclude that section 552.103 applies in this instance, we do not address your remaining arguments for withholding the requested records.

LRD/rho

Ref.: ID# 106582

Enclosures: Submitted documents

cc: Mr. Kris Kelly  
Staff Writer  
Amarillo Globe-News  
P.O. Box 2091  
Amarillo, Texas 79166  
(w/o enclosures)

