



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 26, 1997

Mr. Mark E. Dempsey  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 78711-2548

OR97-1454

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106892.

The City of Garland (the "city") received a request for information concerning a particular 911 incident. You have provided the requestor with some of the requested information. You state that you have no records responsive to a portion of the request, but you have submitted a "call sheet" which you believe is responsive to the parenthetical clarification for that portion of the request. You claim that the "call sheet" and the remainder of the requested information are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing 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. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it--unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982).

This office has concluded that litigation is reasonably anticipated when an attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming, and when a requestor hires an attorney who threatens to sue a governmental entity. Open Records Decision Nos. 555 (1990), 551 (1990).

In a taped conversation with a member of the Garland Police Department, the requestor stated that he wanted to "give the police chief an opportunity to rectify the problem before we pursue a full-blown lawsuit." The requestor indicated that he wants the police department to take certain corrective actions and he seeks monetary damages. Additionally, the requestor has retained an attorney and has consulted with two other attorneys. We believe that, based on the totality of the circumstances, litigation is reasonably anticipated for purposes of chapter 552 of the Government Code. After reviewing the submitted documents, we conclude that they are related to the anticipated litigation. Consequently, the city may withhold the requested information under section 552.103 of the Government Code.

When the opposing party in the litigation has seen or had access to any of the information in these records, 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). It appears that the requestor had access to some of the information contained in the call sheet; such information may not be withheld under section 552.103(a). Similarly, a portion of the information contained in the police report was read to the requestor in the requestor's telephone conversation with a member of the police department. This information must also be released to the requestor. In addition, the 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).

The city may withhold the offense report under section 552.103 except for the information which typically appears on the first page of an offense report. Open Records Decision No. 127 (1976) (summary of front page offense report information). Section 552.103 will not except that information from disclosure. See Open Records Decision No. 597 (1991). Moreover, we note that in Open Records Decision No. 394 (1983), this office determined that a police record of calls answered, like front page offense report information, is generally public. See generally *Houston Chronicle Publ'g 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) (information normally found on front page of offense report is generally considered public and must be disclosed). Thus, the call sheet information must be released. However, some of the front page offense report information includes information protected by common-law privacy as encompassed by section 552.101 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Information must be withheld

from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Industrial Foundation*, 540 S.W.2d at 683; *see* Open Records Decision Nos. 339 (1982), 205 (1978). Additionally, this office has found that the following type of information is excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). To the extent the front page offense report information contains the types of information that we have marked as protected by common-law privacy, you must withhold such information.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/rho

Ref.: ID# 106892

Enclosures: Marked documents

cc: Mr. John T. ("Tom") Baker  
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(w/o enclosures)

