



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 10, 1997

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR97-2019

Dear Ms. Hengen:

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# 108536.

The City of El Paso Police Department (the "city") received a request for a complete copy of case number 96135085, to include disposition. You state that the department has released the incident report to the requestor, but assert that the remainder of the information is excepted from disclosure pursuant to sections 552.103 and 552.108 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the governing body 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).

You have submitted as Exhibit D a petition filed against the City of El Paso in district court in which the plaintiff alleges that the city violated the Whistleblower's Act and harassed him by conducting various investigations relating to him. Therefore, the city has demonstrated that litigation involving the city is pending in this matter. Upon review of the documents at issue, we conclude they are related to the pending litigation. Thus, the city may withhold the requested

information under section 552.103.¹ We note, however, that 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). 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).

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 108536

Enclosures: Submitted documents

cc: Ms. Barbara Vaughn
Law Office of Mario Gonzalez
303 Texas Ave., Suite 800
El Paso, Texas 79901
(w/o enclosures)

¹As we resolve your request under section 552.103, we need not address your argument under section 552.108.