



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 7, 1998

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR98-0053

Dear Mr. Dempsey:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111780.

The City of Garland (the "city") received a request for "15 categories of information relating to Garland fire and police officers." You indicate that they city has provided to the requestor some responsive information. However, you assert that the remaining information is excepted from required public disclosure pursuant to section 552.103 of the Government Code.¹

Section 552.103(a) excepts from 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.

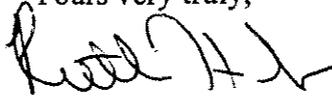
¹In footnote #8 of your letter, you state that the "City may assert other objections in accordance with 552.117 if the city later discovers that the release of information would violate a right of privacy." Section 552.117 of the Government Code provides that a governmental body must keep confidential a peace officer's home address, home telephone number, social security number or information that reveals that the individual has family members. Although the submitted information does not contain information protected under section 552.117, we agree that the city must withhold this type of information from public disclosure.

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 552.103(a).

You supplied to this office information showing that the city reasonably anticipates suit being filed against it. We have reviewed the records at issue, and conclude that they are related to the subject of the anticipated litigation. Thus, you have shown that section 552.103(a) is generally applicable. However, we note that some of the information at issue has been seen by the potential opposing party. 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 now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). We conclude that the city may withhold all of the requested information except for information that has been seen by the opposing party in the anticipated litigation. In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/SAB/ch

Ref.: ID# 111780

Enclosures: Submitted documents

cc.: Mr. B. J. Williams
President, Garland Branch NAACP
P.O. Box 460994
Garland, Texas 75046
(w/o enclosures)