



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 13, 1998

Ms. E. Cary Grace  
Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR98-0714

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114149.

The City of Houston (the "city") received several requests for the payroll records demonstrating regular pay and overtime pay for certain police officers, all documents indicating the amount of money spent by the officers in the course of their employment as vice officers at certain business establishments, and all documents regarding any complaints filed against the officers. You have released the payroll records of some of the officers and documents relating to any complaints against them. You assert that the remaining requested information is excepted from required public disclosure by sections 552.103 and 552.108 of the Government Code. You submit a representative sample of the information the city seeks to withhold from public disclosure.<sup>1</sup>

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is 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

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<sup>1</sup>In reaching our conclusion here, 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 Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

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. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

You have submitted an affidavit from the Harris County District Attorney's Office which avers that several criminal cases are pending as a result of the officers' investigations, and that the requested information is related to the pending cases. After reviewing the information and your arguments, we conclude that you have shown that litigation is pending and that some of the requested information relates to pending litigation. However, you have not shown how the payroll records relate to the pending litigation. Therefore, except for the payroll records showing regular and overtime pay, you may withhold the remaining requested information under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, 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).

You also contend that section 552.108 excepts the payroll records from public disclosure. Section 552.108, the "law enforcement exception," provides in relevant part as follows:

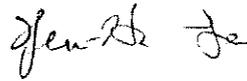
(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication. . . .

After reviewing your arguments, we conclude that the payroll records do not constitute information excepted from public disclosure by section 552.108 as the information does not deal with the detection, investigation, or prosecution of crime.

Lastly, we note that the payroll records contain the police officers' social security numbers. Section 552.117(2) of the Government Code excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information whether the peace officer has family members. Thus, you must withhold from the payroll records information excepted by section 552.117(2).

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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/rho

Ref.: ID# 114149

Enclosures: Submitted documents

cc: Mr. Paul Nugent  
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(w/o enclosures)