



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1998

Ms. Judith A. Hunter
Paralegal
City Attorney's Office
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR98-1532

Dear Ms. Hunter:

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# 116211.

The City of Georgetown (the "city") received a request for information relating to a specific Georgetown police officer. You have submitted copies of eight internal affairs investigations conducted by the Georgetown Police Department (the "department") relating to the named officer. You claim that these investigations are excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you assert that all of the requested documents are excepted from disclosure under section 552.108. 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. . . .

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The requested internal investigations relate to allegations of police misconduct by a specific officer. You state that the individuals arrested in Exhibits B, E, H, I and J are currently facing criminal prosecution. You state that the documents in Exhibits F, G, and K relate to criminal investigations that did not result in conviction or deferred adjudication. Having reviewed the records at issue, it does not appear that the internal investigations and the underlying, criminal investigations are so interrelated that the release of the requested documents would hinder law enforcement efforts. Furthermore, we note that in most instances, the department has already released the details of the internal investigations to the complaining parties. Under these circumstances, we conclude that the internal investigations may not be withheld from disclosure under section 552.108.

You also claim that Exhibit B is excepted from disclosure by section 552.103 of the Government Code. Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a 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. 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.). Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the city must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

You explain that an individual filed a violation of civil rights action against the city in connection with the incident leading to his arrest. Although the suit was subsequently dismissed, you believe that there is a strong probability that this individual may file another related lawsuit. It appears that, in this instance, the prospect of litigation is too speculative for section 552.103(a) to apply. Therefore, you may not withhold Exhibit B under the litigation exception. Furthermore, we do not agree that Exhibit B may be withheld from disclosure based on the "issue of public safety."

Finally, you seek to withhold certain information in Exhibit K under the informer's privilege. The informer's privilege, incorporated into the Open Records Act by section 552.101, protects the identity of one who reports a violation or possible violation of the law to officials having the duty of enforcing that law. *See Roviario v. United States*, 353 U.S. 53,

59 (1957); Open Records Decision No. 515 (1988) at 2. The privilege also protects the content of the informer's communication to the extent that it identifies the informant. *Roviaro*, 353 U.S. at 60. However, once the identity of the informer is known to those who would have cause to resent the communication, the privilege is no longer applicable. *Id.* at 60. In this instance, the statements appear to be from a witness rather than an informant. Thus, these statements may not be withheld from disclosure under the informer's privilege. You must release the requested documents in their entirety.

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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 116211

Enclosures: Submitted documents

cc: Ms. Annie Campos
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(w/o enclosures)